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ST. LOUIS, MO., NOVEMBER 13, 1896.

Cases like Conner v. Canter, recently decided by the Supreme Court of Indiana, will have special pertinency at this time, reminding candidates for office that a contract to appoint certain person as deputy or clerk, in case he is elected, is void as against public policy. It is important to the public that offices be filled by competent and efficient persons, and that the duties be discharged honestly. The persons having business to transact through a public office are entitled to considerate and courteous treatment, and are therefore directly interested in the personnel of all public officers. It is the duty of the person having the power of appointment to exercise it in such a manner as that the public interests will be best subserved. He must be left free to make the best appointments in his power at the time when he makes the appointment; for such appointments are, in a measure, made for the public good. He cannot abridge this right by contracts previously made. If he should promise the office to one person, and should subsequently discover that the public will be better subserved by the appointment of another, he must be free to make the better appointment. It is quite clear, as the Indiana court holds, that a contract which tends or may tend to the injury of the public service is void as against public policy.

Renewed interest in the discussion as to the proper scope of the doctrine of "*stare decisis*" has been excited by a paper read at the last meeting of the New York State Bar Association by Professor C. G. Tiedeman entitled "The Doctrine of Stare Decisis and a Proposed Modification of its Practical Application in the Evolution of the Law." The writer maintains that "the doctrine of *stare decisis*, is not properly applicable to anything more than the judgment of the court that the plaintiff shall or shall not recover on the proved facts of the case. The reasoning in the opinion which one of the judges writes and files as the utterance of the court explaining their judgment is pure *dicta*, and ought not to be conceded the force of judicial precedent." He advocates the suppression of judicial opinions, but does not "propose to take away from the decisions of the appellate court their binding force as precedent, so far as to require inferior courts to follow the precedents of the appellate courts in its judgment that the plaintiff, on the proved facts of the case, shall or shall not recover. I would still provide for the publication of a report of each case decided by an appellate court, but the report should contain only a statement of the proved material facts of the case, and a concise statement of the ruling of the court on the questions of the law. As a substitute for the published opinions of the judges of the court * * * I would propose the appointment of a commission, composed of the ablest jurists of the State, of the same high character which is ordinarily attained in the selection of judges, who shall be charged with the reduction of the existing law to the form of commentaries on the different branches of the law, and after the completion of this primary task, to issue annuals, in which the judgments of the courts during the current year will be analytically explained in the light of their exposition of the existing law, and the modification stated, if any, which the new case has made in the prior law. The courts are to retain their present right to overrule the existing law, and will be required, at least the appellate courts, to yield no more obedience to the expositions of the commission than they now show to their own prior judgments. I would also propose that the expositions of the law set forth by the proposed commission shall not take on the rigid form of a statute or modern code, but rather the easy flowing form of a commentary. Any attempt to reduce the law to the rigid, contracted form of a statutory enactment will provoke the same litigation that an ordinary statute provokes that deals with matters of vital interest to the people." As exemplifying to some extent the suggestions made by Mr. Tiedeman reference may be made to the method now practiced by the Supreme Court of Georgia, who write opinions only in a small portion of the cases decided. An official syllabus is prepared for every decision, and as a rule the official report consists only of a statement of the facts with a syllabus "by the court." The head notes are prepared with great care and intelligence, and as a general thing convey the

theoretical gist of decisions free from illustrative comment or mere *dictum*. Without reference to the further suggestion of Mr. Tiedeman as to appointment of commissioners, etc., it will be generally agreed that some change in the direction of doing away with elaborate opinions of courts in all except important cases would be desirable.

NOTES OF RECENT DECISIONS.

CRIMINAL LAW—EVIDENCE—DEPOSITIONS IN CRIMINAL CASES — CONSTITUTIONAL LAW.—One of the points decided by the Court of Criminal Appeals of Texas in the case of Cline v. State is of considerable interest to those interested in criminal trials, the holding being that the provision of section 10 of the bill of rights, that in all criminal prosecutions the accused shall be confronted with the witnesses against him, refers to the prosecution by "public trial" before the "impartial jury," also guarantied him by the same section; and under that provision, and the declaration of section 29 that "everything in this bill of rights shall forever remain inviolate and all laws contrary thereto * * * shall be void," the reading in evidence against the accused on his trial of testmony given by witnesses on another hearing, or on preliminary examination, cannot be legally authorized. We regret that lack of space prevents giving to our readers the learned and exhaustive opinion of the court.

EVIDENCE—PROOF OF FOREIGN LAWS.—In Dawson v. Peterson, 68 N. W. Rep. 247, the Supreme Court of Michigan discussed the question how the laws of a foreign State might be proven. It was an action to recover the value of professional services rendered by a firm of Ontario lawyers to a citizen of Detroit. The services rendered were in accordance with the rates established by the Ontario statute. To prove this a barrister and solicitor of Ontario was called, and he was shown a printed volume, declared to be the Revised Statutes of Ontario for 1887, and appeared to be printed at Toronto, at the Toronto law printer's. He was asked to state if that was a volume of the statutes commonly admitted and used as evidence in the courts of Ontario, and answered that it was. He also testified that sections 31 and 34 (chapter 147) of that volume had reference to solicitors' fees. The book was then offered and received in evidence, under objection of defendant's counsel that it was incompetent and irrelevant, and that no foundation has been laid for its introduction. "The general rule is," said the court, "that foreign laws may be proved by a printed volume thereof, which a witness having means of information can swear is recognized as authentic, and received by the courts in the country in which such laws are alleged to exist. 23 Am. & Eng. Enc. Law, p. 294; Owen v. Boyle, 15 Me. 147; Woodbridge v. Austin, 4 Am. Dec. 740; Jones v. Maffet, 5 Serg. & R. 523. In the last case a printed copy of the Irish statutes was offered in evidence, with the testimony of a barrister of Ireland that he had received them of the King's printer in Ireland, and that they were good evidence there. The statute was received in evidence by the Pennsylvania court to show the law of Ireland. See, also, O'Keefe v. U. S., 5 Ct. Cl. 674; Talbot v. Seeman, 1 Cranch, 1; Ennis v. Smith, 14 How. 400. In Lacon v. Higgins, 3 Starkie, 178, a printed copy of the French code, produced by the French consul resident in London, who obtained it at a bookseller's shop in Paris, was admitted as evidence of the laws of France by proof that it was admitted and used as evidence in France. In the present case the statute was sufficiently proved, and was properly received in evidence. Sections 31 and 34 fix the tariff of charges for solicitors' fees."

BOARD OF TRADE—SUSPENSION OF MEMBER—REVIEW—RES JUDICATA.—In the case of Board of Trade v. Nelson, 44 N. E. Rep. 743, the Supreme Court of Illinois decided, reversing the trial court, that where a board of trade (which is a voluntary organization, though incorporated, and owning a building from which it derives an income, and is given the right by the act incorporating it to admit or expel such persons as it may see fit, in a manner to be prescribed by its rules and by-laws) suspends a member, on a charge and hearing pursuant to its by-laws, under its by-law providing that, when a member shall be guilty of any act of bad faith or any other dishonorable conduct, he shall be suspended or expelled by the board of directors, as they may determine, the determination of the di-

rectors cannot be reviewed. Upon that point the court says:

The *status* of the board of trade has been determined by this court in numerous cases; and it has been held to be merely a voluntary organization, although incorporated under an act of the general assembly. It is averred in the petition that it owned a building, and rented out rooms as offices, from which it derived an income; that this income was insufficient for its expenses, and an assessment was required each year; and that the present value of a membership is about $800. This does not change in any respect the character of the association, which must be determined by its charter. Any club or voluntary association, whether incorporated or unincorporated, may rent out rooms, and derive income therefrom; but the character of the association is not changed by that fact. The right to pursue a business as a member of such an organization in the hall of the building devoted to that purpose may be a thing of value; but its value is incidental to the membership, and a determination of such membership destroys the rights under it. This corporation is not bound to admit any person to membership, nor was the relator in any way forced into such association. He voluntarily became a member, and by his contract is bound to abide by the rules and regulations of the board. The courts will never interfere to control the enforcement of by-laws of such associations; but they will be left to enforce their rules and regulations by such means as they may adopt for their government. People v. Board of Trade of Chicago, 80 Ill. 134. When the relator became a member of the board of trade, he voluntarily submitted himself to the operation of all laws enacted for its government, and agreed to be bound by them so far as within the corporate authority. The by-law in question was not unreasonable, immoral, contrary to public policy, nor in contravention of the laws of the land. A by-law of this board, providing that, if a member failed to comply with a business contract made with another member, he should be expelled, was held to be valid in People v. Board of Trade of Chicago, 45 Ill. 112. And the validity of this by-law is unquestionable. The court has repeatedly refused to interfere with the disciplinary powers of this board, in equity as well as at law. Fisher v. Board of Trade of Chicago, 80 Ill. 85; Baxter v. Board of Trade of Chicago, 83 Ill. 146; Sturges v. Board of Trade of Chicago, 86 Ill. 441; Pitcher v. Board of Trade, 121 Ill. 412, 13 N. E. Rep. 187. In the case of Ryan v. Cudahy, 157 Ill. 108, 41 N. E. Rep. 760, which was unlike the other cases in this court, in not involving the disciplinary powers of the board, but where the board constituted a committee for the trial of disputes as to property rights between members of the board, this court held a member not bound by a proceeding not according to the rules and regulations provided for the action of such committee. In that case the complainant was held to be entitled to the relief, because the committee refused to hear any evidence in his behalf, and turned him away without a hearing. In that case it was said that the complainant, when he became a member of the board, agreed to abide by its rules, regulations, and by laws; and it was held that, having selected his tribunal, he was estopped from denying the jurisdiction of the committee either as to the person or the subject-matter; and the court expressly disclaimed any intention to interfere with the disciplinary power of the board over its members. No such question is involved in this case as in that. There is no question that the judgment of the board of directors was arrived at in accordance with the rules and regulations of the board. The relator was suspended by a tribunal which he had voluntarily chosen to determine the question, and according to the rules to which he assented in becoming a member; and he had due notice of the proceedings. Such a judgment cannot be collaterally reviewed by the courts. So far as the courts are concerned, the judgment of the board of directors is conclusive, like that of any other tribunal.

It is argued that the charge made was not sufficient. It expressly charged the relator with bad faith and dishonorable conduct in not carrying out a certain agreement, and a copy of that agreement was attached to the charge. This paper is not to be tested by the strict rules of criminal pleading. The accused was informed in what the bad faith and dishonorable conduct consisted; and his communication to the board, set up in his petition, showed that he was fully informed as to its nature. Anything further would be matter of mere form, affording neither security nor information to him.

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It is urged that the judgment of suspension was invalid. But the by law provided for such suspension, and the enactment of such a by-law was within the powers of the corporation.

TRUSTS AND MONOPOLIES—RIGHTS OF MEMBERS—EQUITY JURISDICTION.—The case of Greer v. Payne, 46 Pac. Rep. 190, decided by the Court of Appeals of Kansas, is a good one on the subject of combinations and monopolies. It is there held that all combinations and associations of persons formed in that State for the purpose of imposing an unreasonable restraint upon the exercise of a trade or business are unlawful and void, as against public policy, and contrary to the statutes of the State; and that a court of equity will not lend its aid to a member of such unlawful association, to enable him to retain his membership therein, and to restrain the association from suspending or expelling him therefrom for a violation of its illegal rules and by-laws. Upon the law applicable to the case the court says:

The articles of association and the rules and by-laws must be taken as a whole, in order to determine the character of this exchange. It matters not how meritorious and praiseworthy its declared objects may be. The law cannot be evaded by colorable pretenses. It looks at the substance of things, whatever disguise may be assumed to conceal it. It is impossible to read the articles of association and by-laws of

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this exchange without being convinced of the fact that the principal inducement is, not "to promulgate and enforce among the members correct and high moral principles in the transaction of business," as stated in the articles, but that it is, rather, to prevent competition, along certain lines, among those engaged in the live-stock commission business, and to maintain uniform minimum prices for their services. Thus, by section 11 of rule 9, a commission man or firm is prohibited, under penalty of a fine of not less than $500 nor more than $1,000, from sending a prepaid telegram giving information as to the condition of the markets to a farmer or stockman contemplating the sale or shipment of stock. Another rule prohibits members from doing business with one not a member, who attempts to transact the live-stock commission business at the Kansas City Yards. These and other rules of a like character are, apparently, the main features of this organization, which make a membership therein so valuable. The exchange makes no pretense of giving direct aid to its members in securing business, but leaves that to their own individual efforts. Its profitableness, however, is, no doubt, greatly augmented by reason of the fixing of charges by a combination which is powerful enough to monopolize such services. An organization having such objects is an unlawful combination, which is expressly prohibited by law. Laws 1889, ch. 257. Combinations and associations which are entered into for an illegal restraint of trade are usually organized with great skill, and with a special view to covering up the unlawful purposes by professed designs and objects which are lawful; hence the recognized difficulties which obstruct the enforcement of all general laws against unlawful trusts and combines. This fact, doubtless, induced the legislature of this State to enact a law which was specially designed to prevent and suppress unlawful combinations of persons engaged in buying or selling live stock for others on commission. Laws, 1891, ch. 158. That act not only makes it unlawful for two or more persons or corporations engaged in such business to enter into any combination for the purpose of regulating the charges to be demanded, but it specially provides: "It shall be unlawful for any person or persons, corporation or corporations, doing business in this State, to be or become a member of any society, association, or corporation whose by-laws provide for and fix the minimum commission for the selling of live stock for others, or whose by-laws prohibit its members from purchasing live stock from persons who are not members of such society, association or corporation." And any one violating its provisions is deemed guilty of a misdemeanor, and subject to severe penalties. The plaintiffs invoke the act to invalidate and nullify the by-laws which they are charged with violating; while the defendants contend that its legal effect is to put the plaintiffs in the position of asking the courts to maintain them in a membership which is a direct violation of the law.

The association of the persons composing the exchange is a voluntary one. Their mutual rights, of whatever nature, are contractual. Any right which the plaintiffs may have to membership is based upon, and grows out of, the contract entered into between them and the exchange, at the time they became members and signed the articles of association. The right to the relief which they ask against the threatened action of their associates is based upon the recognition of this contract, and granting the relief would be the solemn declaration of the law that they must not be deprived of its privileges and benefits. No only is the entering into such contract relations expressly prohibited by the statute, but the simple act of continuing the relationship is made a misdemeanor, subject to severe penalties. The contract of membership is therefore illegal and void, and no right can grow out of it. Hence it comes to this: A court of equity is asked to assist the plaintiffs in carrying out an illegal contract, so that they may enjoy its fruits, and to aid them in maintaining a position, as members of an organization, which can be done only by a continual violation of the law. This will not be done. The law will not allow any effect to an illegal contract, either by enforcing it, or by aiding one to secure benefits accruing from it. Whenever it is necessary for a plaintiff to establish or rely upon any illegal contract, as a basis of his right to relief, the courts will not stop to inquire into the merits of the controversy, but will at once refuse to exercise their jurisdiction in his behalf. The general rule is thus stated by Mr. Pomeroy: "Whenever a contract or other transaction is illegal, and the parties thereto are, in contemplation of law, *in pari delicto*, it is a well-settled rule, subject only to a few special exceptions, depending upon other considerations of policy, that a court of equity will not aid a *particeps criminis*, either by enforcing the contract or obligation while it is yet executory, or by relieving him against it, by setting it aside, or by enabling him to recover the title to property which he has parted with by its means. The principle is thus applied in the same manner when the illegality is merely a *malum prohibitum*, being in contravention to some positive statute, and when it is a *malum in se*, as being contrary to public policy or to good morals." Pom. Eq. Jur. § 402. See, also, Mellison v. Allen, 30 Kan. 382, 2 Pac. Rep. 97; Water-Supply Co. v. City of Potwin, 43 Kan. 404, 23 Pac. Rep. 578; Sheldon v. Pruessner, 52 Kan. 579, 35 Pac. Rep. 201; Yount v. Denning, 52 Kan. 629, 35 Pac. Rep. 207; Buchtella v. Stepanek, 53 Kan. 373, 36 Pac. Rep. 749; Woodworth v. Bennett, 43 N. Y. 273; Watson v. Fletcher, 8 Gratt. 1; Griffin v. Piper, 55 Ill. App. 213; Watson v. Murray, 23 N. J. Eq. 257; Spalding v. Preston, 21 Vt. 9; Abbe v. Marr, 14 Cal. 210; Nester v. Brewing Co., 161 Pa. St. 474, 29 Atl. Rep. 102; Rigby v. Connol, 14 Ch. Div. 482; Swaine v. Wilson, 24 Q. B. Div. 252; More v. Bennett, 140 Ill. 69, 29 N. E. Rep. 888; Salt Co. v. Guthrie, 35 Ohio St. 666; Coppell v. Hall, 7 Wall. 542; Armstrong v. Toxler, 11 Wheat. 258; Roby v. West, 4 N. H. 285; Dillon v. Allen, 46 Iowa, 299.

While the above are for the most part cases in which the plaintiff sought to recover the fruits and benefits derived from an illegal contract, yet they all involve an application of the same principle. The mere fact that the courts in very few instances have been appealed to, to aid a party in carrying out an illegal contract, or to enable him to enjoy future benefits to be derived therefrom, and that parties to such contracts, with few exceptions, have ventured into court only for the purpose of recovering something already earned, or damages previously sustained, is strong evidence of what the opinion of the legal profession has been upon this question. Our attention has been called to no case, and we know of none, in which a court of equity directed the specific performance of an executory contract which was tainted with illegality, or in which the parties to it were granted any assistance in carrying it out. Rigby v. Connol, *supra*, was an action similar to the one at bar, in which the plaintiff sought to restrain the trustees of a trades union from excluding him from membership therein, because of his violation of a rule which, he alleged

was illegal and void. It was held that as the trades union was an unlawful association, for the reason that some of its principal objects were in restraint of trade, the court would not aid the plaintiff in maintaining his membership therein. In the opinion it is said: "It appears to me that it is clearly an unlawful association. It is an association by which men are not only restrained in trade, but they are bound to do certain acts under a penalty. Take the very act for which this man was expelled. He was expelled because he bound his son apprentice in a shop where the workmen did not belong to this union, but to another union. That is the allegation. And the rule is that any man binding his son in a 'foul shop,' which, as it has been explained to me, includes a shop of this description, where the members employed belong to another union, and not to this union, shall be fined £5, and so on, according to the rules. I see a great number of other stipulations of a character which are not only a restraint in trade, but so much in restraint of trade, limiting the subject of it, that I have no doubt, before this act [legalizing certain trades unions] was passed, these rules would have been altogether illegal; and if nothing in the act, therefore, will assist the plaintiff, he must still be in the position of a member of an illegal association, coming to a court of justice to assist him to enforce his rights under that illegal association." In Spalding v. Preston, *supra*, Redfield, J., said: "One who sets himself deliberately at work to contravene the fundamental laws of civil governments—that is, the security of life, liberty, or property—forfeits his own right to protection in those respects wherein he was studying to infringe the rights of others. · · · If any member of the body politic, instead of putting his property to honest uses, convert it into an engine to injure the life, liberty, health, morals, peace, or property of others, he thereby forfeits all right to the protection of his *bona fide* interest in such property before it was put to that use." In Coppell v. Hall, *supra*, considering the principle involved in such cases, it is said: "In such cases there can be no waiver. The defense is allowed, not for the sake of the defendant, but of the law itself. The principle is indispensable to the purity [of its administration. It will not enforce what it had forbidden and denounced. The maxim, '*Ex dolo malo non oritur actio*,' is limited by no such qualification. The proposition to the contrary strikes us as hardly worthy of serious refutation. Whenever the illegality appears, whether the evidence comes from one side or the other, the disclosure is fatal to the case. · · · Wherever the contamination reaches, it destroys. The principle to be extracted from all the cases is that the law will not lend support to a claim founded upon its violation." In Roby v. West, *supra*, the following forcible language is used: "The principle that no court shall aid men who found their cause of action upon illegal acts is not only well settled, but a most salutary principle. It is fit and proper that those who make claims which rest upon violations of the law should have no right to be assisted by a court of justice. It is fit and proper that courts should refuse their aid to those who seek to obtain the fruits of an unlawful bargain. It is fit and proper, when parties come into court to litigate claims founded upon illegal contracts, in relation to which they stand *in pari delicto*, that they should be reviewed and treated in those transactions as outlaws, who have forfeited the protection of the law; and it is fit and proper that they should be left to adjust their unlawful concerns as they can, and enjoy the fruits of their transgressions of the law as they may." The general rule is thus summarized by the court in the syllabus in Buchtella v. Stepanek, 53 Kan. 373, 36 Pac. Rep. 749: "Where parties purposely engage with equal guilt in illegal, immoral, or fraudulent dealings, the court leaves them where it finds them, and will not lend its aid to either party."

A very plausible and ingenious argument is made by the able counsel for plaintiffs, to the effect that a denial of the relief prayed for will keep the defendants in a position where they can enforce their illegal by-laws against members, and thus perpetuate their existence as an unlawful organization; whereas the granting of the relief would be a virtual wiping out of such illegal by-laws, and the exchange, with its members, would be left to conduct its business under valid and lawful rules and regulations. It is contended that the plaintiffs should be aided in resisting the enforcement of the illegal rules, and the defendants given to understand that such regulations and agreements will not be recognized or upheld by the courts. The argument is presented with much force and ability; but, in our opinion, it ignores the vital facts in this case, and calls for an abandonment of well-settled rules of law. We must not lose sight of the nature and object of this action. The plaintiffs' purpose is not to wipe out illegal by-laws; it is to prevent the wiping out of an unlawful membership. They seek to avoid the enforcement, as against them, of rules which, as alleged in their petition, they have been zealous and faithful in living up to and enforcing against others. If retained as members, they would, no doubt, in the future, as in the past, not deny themselves the opportunity thus afforded to acquire illegal gains. When an association of this character comes before a court of equity, it will not stop to weed out the illegal growths which have fastened themselves upon it, and endeavor to fashion out of it something that is entitled to judicial recognition. It is clear that any order or judgment, whether for the plaintiffs or for the defendants, which the court could render in this case, would not eliminate from the exchange the obnoxious by-laws. So far as this action is concerned, they will remain without change. The organization itself will continue with unimpaired ability to violate the law, and with impunity to trample upon the public interests. A membership therein, after the judgment of this court is rendered, will be as much within the prohibition of the statute as it was before this action was commenced. These parties have, by their voluntary acts, created an organization which the law condemns, and one with which no man can be connected without being answerable to the laws of the State as a criminal. Clearly, the law will not aid them under the circumstances. A court of equity takes them as it finds them, and as it finds them it leaves them, undeserving of aid and assistance in a matter which inheres in, or grows out of, their illegal contracts.

DISBARMENT FOR PROFESSIONAL MISCONDUCT INVOLVING INDICTABLE OFFENSE.

The recent decision of the Supreme Court of Idaho, *In re* S. L. Tipton,[1] raises anew the question of the jurisdiction of the court to proceed in an application for disbarment, where

[1] 42 Pac. Rep. 504.

the malpractice involves an indictable offense committed in a professional employment, and there has been no previous criminal proceedings therefor. The Supreme Court of Idaho held, on a charge of bribery committed in a professional employment, that the court must "defer action until the district court or the grand jury have had an opportunity to act in the matter," and several decisions of the Supreme Court of California[2] are cited to sustain the holding of the court, none of which, happily, are susceptible of such construction. The error of the supreme court lies in proceeding upon the theory that an application for disbarment is a criminal proceeding, and in assuming that the court is trying and determining a criminal offense with all its attendant results. Such is not the law. Nor do the familiar constitutional provisions embodied in the 5th and 6th amendments to the federal constitution have any relation to the subject in hand. The character of the judgment in a disbarment obviously emphasizes this. The judgment is neither one of conviction nor acquittal of a crime, but a judgment that the name of the party be stricken from the roll of attorneys and counselors of the court, and a deprivation of the right to practice as an attorney or counselor, either permanently, or for a limited period, according to the gravity of the offense charged. In short, it is a judgment of suspension or removal from office. These views are abundantly sustained by authority. In no decision to be found is an application for disbarment recognized as a criminal proceeding. Mr. Justice Bradley, in *Ex parte* Wall, a leading and instructive case on this subject, says,[3] that: "The constitutional privilege of trial by jury does not apply to prevent the courts from punishing its officers for contempt or from removing them in proper cases. The proceeding is in its nature, civil and collateral to any criminal prosecution by indictment. The proceeding is not for the purpose of punishment, but for the purpose of preserving the courts of justice from the official ministration of persons unfit to practice in them, and is a regular and lawful method of proceedure, practiced from time immemorial." In this case it is further said, as to the necessity of a criminal prosecution as a prerequisite to an application for disbarment: "Cases may occur in which such a requirement would result in allowing persons to practice as attorneys, who ought, on every ground of propriety and respect for the administration of the law, to be excluded from such practice. A criminal prosecution may fail, by the absence of a witness or by reason of a flaw in the indictment, or some irregularity in the proceedings; and, in such cases, even in England, the proceeding to strike from the roll may be had. But other causes may operate to shield a gross offender from a conviction of crime, however clear and notorious his guilt may be; a prevailing, popular excitement; powerful influences brought to bear on the public mind or on the mind of the jury; and many other causes which might be suggested; and yet, all the time, the offender may be so covered with guilt, perhaps glorying in it, that it would be a disgrace to the court to be obliged to receive him as one of its officers, clothed with all the prestige of its confidence and authority." Judge Lord, in State v. Winton, says: "The power of the court is not exercised for the purpose of reaching results which flow from the exercise of criminal jurisdiction, but it is directed solely to ascertaining whether, upon the facts alleged, although involving indictable matter, there has been a breach of official duty—misconduct in office. When the accusation against an attorney is for misconduct in his office, although involving matter for which he may be indicted, the inquiry is directed to the truth of the accusation, only so far as it affects his character for trustworthiness and want of integrity, leaving the matter of the criminal charge to be prosecuted and punished by the courts constituted for that purpose. The character of the judgment rendered would seem to make this all the more apparent. It is not a criminal judgment, convicting or acquitting of a crime, and carrying the consequences of such a judgment, but a judgment of suspension or removal from his office as an attorney. This shows that the jurisdiction acts upon the office or upon the facts which show him unfit to hold such office. In none of the authorities is the proceeding recognized as one of punishment, but for the purpose of protecting the court

[2] *Ex parte* Tyler, 107 Cal. 78, 40 Pac. Rep. 33; *In re* Stephens, 102 Cal. 264, 36 Pac. Rep. 586; *In re* Tilden, 25 Pac. Rep. 687 (not officially reported).

[3] 107 U. S. 265.

and excluding from a participation in its councils those of its officers who are shown to be corrupt, dishonest, or untrustworthy."[4] The conclusion of the Idaho Supreme Court, therefore, that had they proceeded in the disbarment "respondent would be deprived of a right granted by the statute, and guaranteed by the constitution" is contrary to the overwhelming weight of authority. The Idaho Supreme Court fails to recognize the clearly defined distinction between indictable offenses committed by an attorney in the course of his professional employment, and those committed in his private capacity, in no wise connected with his professional employment. An examination of the California cases cited by the court and others not cited and evidently not seen, illustrates this. In Tilden's Case,[5] the charge was a moral delinquency wholly disconnected with the oath or duty of the attorney, nor was the charge, which was larceny, alleged to have been committed in violation of his professional obligations. In Stephen's Case,[6] the charge was a fraudulent appropriation of money. The court declined to entertain the charge unless the complainant had shown his good faith in attempting to establish his claim against the attorney by regular proceedings in the proper court. In *Ex parte* Tyler,[7] the petitioner applied for a writ of *habeas corpus* from a judgment of imprisonment for contempt of court in practicing before the court while a judgment of suspension from practice was in force against him. In support of his application, petitioner contended that the court, in originally entertaining disbarment proceedings, had no jurisdiction, and that the judgment was therefore void, for the reason that the charges against him in the disbarment proceedings, to-wit, embezzlement and subornation of perjury, were felonies, and that he could not be convicted of those offenses except by a jury. The court held that an examination of the proceedings under which the petitioner was suspended, showed that the charges were for the violation of his duties as attorney and counselor, and of unprofessional conduct, and that whether the evidence offered in support of the charge would have maintained an indictment was immaterial, and the writ was discharged. In State v. Cadwell,[8] the attorney took a decree of court into his possession, and surreptitiously changed and altered it, with the corrupt purpose and intent to defeat the rights of the parties thereto, and to advance his own interests. It was contended that he ought not to be disbarred because it was not shown that he had committed or been convicted of any crime. The court held that the question presented was not whether the attorney was guilty of a crime of which he had been or ought to be convicted, but whether under the facts he was fit to practice law and use the license of the court to carry on nefarious practices as an attorney. In State v. Winton,[9] the charge was willful deceit, and professional misconduct and violation of confidence, and objection was raised to the jurisdiction of the court to issue an order to show cause on the ground that the matter charged, although done in a professional character, constituted an indictable offense and could not be tried in a summary manner. The court, through Judge Lord, in an opinion which for its vigorous and exhaustive discussion of this question is unsurpassed, overruled the objection. The court in the subsequent case of State *ex rel.* Idleman v. Cowing,[10] while adhering to State v. Winton, dismissed the information on the ground that the perjury which was denied, if committed at all, was committed in a private capacity, and not in the line of a professional relation. The court said that while it was the better rule to summarily disbar an attorney where the crime charged affected his moral character and fitness to practice, and was admitted or clearly proven, yet where the charge was of a single criminal act, "committed in his private capacity," and the evidence was conflicting, and doubt existed as to his guilt, it was eminently just and proper that the accused should be accorded the right of trial by jury. Mr. Justice Bradley, in *Ex parte* Wall, *supra*, very exhaustively reviews all the English and American authorities bearing upon the question under discussion, and clearly recognizes the distinction between acts committed out-

[4] State v. Winton, 11 Or. 456, 5 Pac. Rep. 337.
[5] *In re* Tilden, 25 Pac. Rep. (Cal.) 687 (not officially reported).
[6] *In re* Stephens, 102 Cal. 264, 36 Pac. Rep. 586.
[7] 107 Cal. 78, 40 Pac. Rep. 33.
[8] 40 Pac. Rep. 176 (Mont. 1895).
[9] 11 Or. 456, 5 Pac. Rep. 337.
[10] 38 Pac. Rep. 1090 (Or. 1895).

side the professional relation, and those committed by virtue of it. In that case, the lower court had summarily disbarred an attorney for advising and encouraging mob violence, and on *mandamus* to compel the lower court to reverse the order, it was strenuously contended, that when a crime was charged against an attorney for which he may be indicted, and the truth of the charge was denied, disbarment would not lie, especially if the act charged was not committed in a professional capacity. The court considered that under such circumstances of outrage, and open defiance of the laws, the lower court properly exercised its summary power of removal. On *mandamus* to compel the lower court to vacate an order disbarring relator for abstracting a subpoena, and tampering with a decree of court after it had received the sanction of the judge's signature, though the relator's misconduct was without any bad motive or fraudulent design, it was contended that the charge of abstracting the subpoena could not be urged as a ground for disbarment, because, if the charge was true, it was a criminal offense, but the court thought the rule well sustained, that where the charges were for misconduct in the practice, though such misconduct amount to an indictable offense, the court would proceed in disbarment without any regard to a previous criminal prosecution. "The court does not proceed in such cases upon the theory of punishing the attorney, but it investigates the question of professional delinquency to determine the fitness of the attorney to be intrusted with the conduct of causes, and the administration of law."[11] It will thus be seen from examination of the authorities, that where an attorney is charged with a violation of his professional obligations, either to his client or the court, or with professional delinquency in matters pertaining peculiarly to the relations between him and his client, it is no defense to a disbarment proceeding that the misconduct may render him liable to a criminal prosecution. The courts have almost uniformly exercised their summary power of removal, notwithstanding the charges may form a basis for an indictment. This is an inherent power residing in all courts; and while it may sometimes be true, that for an offense committed by an attorney in his private capacity, the courts will remand the charges to the proper tribunal for trial by jury, yet, as we have seen, the rule is not an inflexible one. The opinion of the Idaho court in the Tipton case, shows that the charge was "a direct, unequivocal charge that the respondent accepted and received a bribe while he was the regularly qualified and acting city attorney of Boise City; that it was given to him to influence his action, as such attorney, in favor of the parties giving it." The case, therefore, properly falls within the distinction drawn in the decisions heretofore cited, and the power to have proceeded summarily, is sustained by an imposing array of authorities. The decision is also squarely in the teeth of one of its former adjudications.[12] In Badger's Case, the charge was that he did corruptly instigate, suborn, and persuade one Abbott to falsely and fraudulently personate and represent herself to be one Wing. He was summarily disbarred. For aught that appears to the contrary, the suborner of a perjury was as much entitled to a trial by jury as the venal attorney who accepted a bribe. Why the court in view of its decision on a charge of subornation of perjury, should in defiance of that decision which is in line with the uniform adjudications of other courts, stand palsied at a crime, which, to-day is threatening free government, does not appear from the record. Where the misconduct charged against an attorney is indictable, but in no manner connected with his professional employment, and the misconduct is not admitted, there has been some diversity of practice among the courts. In some cases the courts have held that where the misconduct is of such gross character as to gravely affect his standing, they will exercise their summary power of removal. In other cases it is held that there must be regular criminal proceedings instituted, before the court will proceed to strike from the roll.[13]

[11] State v. Finley (Fla.), 11 South. Rep. 500; *In re* Shepard (Mich.), 67 N. W. Rep. 971.

[12] *In re* Badger, 35 Pac. Rep. 839, 38 Cent. L. J. 411.

[13] See *Ex parte* Wall, 107 U. S. 265, where all the English and American authorities bearing on the question are collated and discussed. See, also, State v. Winton, 11 Or. 456, 5 Pac. Rep. 337; *In re* Shepard (Mich.), 67 N. W. Rep. 971. In the latter case the charge was unprofessional conduct in attempting to stifle evidence of the commission of a crime. The court declined to discuss the attorney's right to trial by jury, saying that the control of admission to the bar was confined to the courts, and that juries had nothing to do with it, and that it was the uniform

In conclusion it may be said, that when an attorney is guilty of malpractice attended with fraud and corruption, and which is an indictable offense, whether committed inside or outside the professional relation, the court should exercise its summary power of removal and disbar him. For a court to refuse to act, or to exercise its summary power under such circumstances, and continue him upon the roll, thus holding him out to the community as a member of the bar, and an officer of the court, worthy of its confidence and support, and clothed with the prestige of its authority, "would be a scandal to the court, a reproach to the administration of justice, and a grave wrong against an honorable profession." * * * "Legal knowledge and skill are not the only requisites of attorneys, but they must be conjoined with that ancient requirement of the law, integrity of character."[14]

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practice for the court itself, to dispose of such matters. An exhaustive review of the authorities will also be found in a note in 45 Am. St. Rep. 71, *et seq.* And see the very late case of *In re* Wharton (Cal. 1896), 46 Pac. Rep. 172, where an attorney filed, as genuine, a false and fraudulent affidavit of service of summons, it was held that he was not entitled to a trial by jury, notwithstanding the charge amounted to a felony. That there was nothing in the contention that the court must "defer action until the district court or the grand jury have had an opportunity to act in the matter" before disbarment proceedings could be entertained.

[14] Lord, J. in State v. Winton, *supra*.

NEGOTIABLE INSTRUMENTS — ALTERATION.

LIGHT v. KILLINGER.

Appellate Court of Indiana, Sept. 30, 1896.

The fact that the agent of the holder of a note, empowered to collect the note, and apply the proceeds in payment on a debt due him from his principal, inserted in the note in pencil, as a memorandum merely, the name of a bank, in the blank left in the note after the words "payable at," so as to remind him where to present the note for payment, is not such an alteration as will prevent a recovery on the note, the words inserted having been eliminated before suit was brought.

REINHARD, J.: Killinger sued appellants Light and Dixon upon a promissory note alleged to have been executed by Light to Dixon, and by Dixon indorsed to Killinger. Dixon and Light each filed a separate answer, in two paragraphs, the first of which was the general denial, and the second set up a material alteration of the note. The appellee replied the general denial. The cause was submitted for trial to the court. When the evidence was closed, the appellants filed a demurrer thereto, which was overruled, and an exception reserved to the ruling. The sole assignment of error presents the question of the correctness of the ruling of the court in overruling the demurrer to the evidence.

The evidence shows that Killinger was a manufacturer of refrigerators, and sold a quantity of such furniture to Dixon, and took, in part payment, the note executed by Light to Dixon, reading as follows: "Indianapolis, Ind., July 31, 1891. Sixty——after date, I promise to pay to W. H. Dixon one hundred dollars, with interest at the rate of 6 per cent. per annum. Negotiable and payable at——, and five per cent. attorney's fees, value received, without any relief whatever from valuation or appraisement laws. The drawers and indorsers severally waive presentment for payment, protest, or notice of protest and non-payment of this note. (Signed) R. C. Light." Dixon indorsed the note to Killinger by signing his name across the back. Two or three days before the note matured, Killinger indorsed the same to Balke & Krauss, a business firm in Indianapolis, with whom Killinger had dealings, and to whom he was indebted on an account current. It was the practice of these parties that Killinger would turn over to Balke & Krauss notes received by him from his customers, and, as payments on such notes were made, they were placed to Killinger's credit. If any note was not paid, it was returned to Killinger. When Killinger indorsed and delivered the note in suit to Balke & Krauss, Mr. Krauss, a member of said firm, asked Killinger in what bank Dixon transacted his business. Killinger answered that he did not know, but would ascertain the fact from Mr. Dixon. He saw Dixon, and learned from him that it was the Bank of Commerce. He so reported to Krauss, and the latter thereupon, with a lead pencil, inserted the words "Bank of Commerce" in the blank space left in the body of the note following the words, "Negotiable and payable at." This was done in the presence of Killinger, but not by his direction. When the note became due, Balke & Krauss presented it for payment at the Bank of Commerce, but it was returned to them unpaid, and they returned it to Killinger, who, after repeatedly asking Dixon to pay it, and failing in the collection thereof, at the expiration of more than two years, brought this action upon it. The suit is brought upon the note as it was before the insertion "Bank of Commerce" was made, said words not being contained in the copy declared upon.

It is the contention of the appellants' counsel that the facts above stated constitute a material alteration of the note made by and while in the hands of a legal holder or owner thereof, and that such alteration destroys the validity of the note, and defeats the appellee's right to recover

thereon, either in its original or its altered form. We have carefully considered the question, and our conslusion is that the court committed no error in overruling the demurrer to the evidence. There was evidence from which the court might legitimately have found, conceding that the insertion was made by the legal holder of the note, although it was shown that the firm of Balke & Krauss only held the paper for collection, that the words "Bank of Commerce" were inserted as a mere memorandum, so as to enable the said Balke & Krauss to present it for payment when it became due, inasmuch as Dixon's residence was a considerable distance from their office. The words were written in pencil, and there appears to have been no attempt to indorse the note to an innocent purchaser, or to defraud or impose upon any one of them. It could easily have been seen at a glance that they were written in a different hand from those written in ink in the body of the note, and this was sufficient to put any purchaser upon inquiry. No harm has resulted to the maker or any other person from the placing of the words in the blank space. There was no attempt at any time to treat the note as commercial paper, and, as we have said, the action is upon the note in its original form. Even if the appellee had treated the note as one governed by the law merchant, we doubt our authority to hold that the alteration was unauthorized. The note bears upon its face every evidence of one negotiable under the statute as an inland bill of exchange. It contains the usual stipulation in such paper "that the drawers and indorsers severally waive presentment for payment, protest, or notice of protest and non-payment." It also contained the incomplete sentence, "Negotiable and payable at," followed by a blank space. Under such circumstances, the place of payment may be filled in by the holder. Rand. Com. Paper, § 186, and cases cited. Of course, to make the paper negotiable by the law merchant, it must be made payable at a bank in this State. Rev. St. 1894, § 7520. But when a bank is named in the note, without naming the State in which it is located, it will be presumed that such bank is within this State. Manufacturing Co. v. Caven, 53 Ind. 258; Henderson v. Ackelmire, 59 Ind. 540; Clark v. Carey, 63 Ind. 105. Hence if the note had been made payable at the Bank of Commerce, it would have been a negotiable instrument, under the statute. The words inserted were not repugnant to the plain purport and tenor of the contract, but in harmony with it. This being so, in the absence of any agreement or direction to the contrary, would the holder not be authorized impliedly to fill up the blank space, and, if so, could the note not be collected even in its changed form, especially by an innocent holder? Spitler v. James, 32 Ind. 202; Luellen v. Hare, *Id.* 211; Gillaspie v. Kelley, 41 Ind. 158; Blackwell v. Ketcham, 53 Ind. 184, 186; Emmons v. Meeker, 55 Ind. 321, 326; Marshall v. Drescher, 68 Ind. 359; Rand. Com. Paper, § 123. As to this, however, we need not decide. The rule is different, of course, where the note, perfect in its terms, is a non-negotiable one, but is changed so as to make it negotiable. Cronkhite v. Nebeker, 81 Ind. 319; DePauw v. Bank, 126 Ind. 553, 25 N. E. Rep. 705, and 26 N. E. Rep. 151. In such a case the holder would have no implied authority to change the purport of the note by filling the blank space with matter which is foreign to the apparent purpose for which the blank has been left. McCoy v. Lockwood, 71 Ind. 319. There may also be instances when the maker would be liable to a *bona fide* holder without notice of the alteration, while not liable to the original payee or an indorsee who made the change. See Cronkhite v. Nebeker, *supra*. But we have no such case here, nor do we hold that in the present case the maker is liable because he conferred an implied authority to fill up the blank space, for the appellee has not sought to hold him responsible on that ground. What we do decide is that there was no material alteration, or, at least, that the trial court had the right to so conclude from the evidence.

That a material alteration of a note made by the holder will discharge the maker from liability on the instrument, there can be no doubt, under the authorities. 1 Am. & Eng. Enc. Law, 508. But in the present case there was evidence from which the court could easily have drawn its inference that the pencil writing was made as a mere memorandum, without any intent to defraud, and without any intent to change the character of the obligation. In Horst v. Wagner, 43 Iowa, 373, the payee, desiring to transfer the note, ignorantly erased his own name, and wrote, instead, the name of the transferee. He afterwards restored the note to its original form, and indorsed it, and it was held in an action on the note that the alteration was immaterial. An author of recognized standing says: "There may be many cases of innocent material alterations in which it would work injury, loss, or inconvenience to confine the holder to a suit upon the original consideration. If the indorser were sued, and were held liable, he could not have the maker's note restored to him as a foundation for his action if it were utterly annihilated by the alteration. And the indorsee might have rendered such a consideration as could not be recovered back; for instance, professional services, labor, or another note. For these reasons, it would seem just to allow a more specific remedy; and, while we have seen no precedent which so decides, it has been suggested that a court of equity would, under its jurisdiction over mistakes, correct an alteration innocently and mistakenly made, and restore the instrument to its original form. And there is no sufficient reason why the party should not himself be permitted to undo what he has mistakenly done, provided no other person has become so situated towards the instrument that it would operate prejudically upon him. The burden of proving innocence

would be a sufficient safeguard to prior parties; and when innocence is clearly proven, and the *prima facie* presumption of guilt overthrow, it would seem too rigorous to inflict upon the innocent a penalty only deserved by the guilty." 2 Daniel, Neg. Inst. § 1414. In a Pennsylvania case, where, within an hour after the note was signed, the payee returned to the maker's office, where the clerk, at the payee's request, but without the knowledge and consent of the indorser, inserted the words "with interest," the maker ratifying the action of the clerk, but subsequently the payee had the inserted words expunged, apparently with chemicals, and sued the maker upon the note in its original form, the latter resisted payment on the ground that the note had been altered; but it was held that, no fraud having been intended, the plaintiff had a right to restore it to, and sue upon it in, its original form, Thompson, C. J., saying: "Now, it seems to me that, as the identity of the note remained, and there was nothing in it to enlarge the obligation of the indorser, and as what had been done was innocently but mistakenly done, and expunged, for aught we know, within an hour after it had been done, there is no rule of law unreasonable enough to hold it avoided by this. I admit that, if there had been evidence of a fraudulent tampering with the note, a different rule would apply. But regarding it as mistakenly done, in an attempt to make the note comply with the contract, and assented to by the original parties, one of them the principal in it, and without fraud, ought the consequences of such an act, done under such circumstances, be made to rank with fraud and perjury? It ought to be regarded, as it manifestly was, to the indorser immaterial." Kountz v. Kennedy, 63 Pa. St. 187. In Shepard v. Whetstone, 51 Iowa, 457, 1 N. W. Rep. 753, a blank in the note, after the word "at," was filled, without any fraudulent design, with the words "with ten per cent. interest from date." The note was subsequently restored to its original form, and negotiated to an innocent holder without notice. It was held that he could recover on the note. In Bank v. Bangs, 42 Mo. 454, there had been added at the foot of the note, to the left of the signature, the words "at Goodyear Bros. and Durands, New York, Jan. 10-13," after the words "due at." It was urged that this was such a material alteration as would avoid the note. The court held that the words were to be taken as a mere memorandum, and therefore immaterial, the court saying: "It should be kept in mind that this action is against the makers themselves. It was not declared upon as a note payable at the City of New York. * * * The memorandum in this case does not increase or vary in any respect the liability of the defendants, and therefore presents no obstacle to the recovery of the plaintiff." As said by Lotz, J., in Kingan & Co. v. Silvers, 13 Ind. App. 80, 37 N. E. Rep. 413: "No direct injury was done the defendants by the alteration of the note. The utmost that can be said is that a rule of public policy was violated. The doctrine of public policy, like the statute of frauds, should be invoked to prevent, and not to perpetrate, a fraud. A clear and unmistakable case of the violation of a rule of public policy should be made before the law will lend its aid to deprive one person of property for the benefit of another." See, also, Palmer v. Largent, 5 Neb. 224; Derby v. Thrall, 44 Vt. 413. The court did not err in overruling the demurrer to the evidence. The judgment is affirmed.

NOTE.—*Late Cases on Alteration of Negotiable Instruments.*—Where no rate of interest is expressed in a note, and the legal rate is 7 per cent., an addendum placed "on the lower end of the note," after its execution and delivery, and not incorporated in the body of it, reciting that "the above note is to be accounted for with interest at 8 per cent. per annum," which is signed by the principal, but not signed by the surety, nor assented to by him, is not a new contract of the principal alone, but constitutes such a material alteration of the original note as will discharge the surety. Sanders v. Bagwell (S. Car.), 16 S. E. Rep. 770. A pencil indorsement on a note, stating it to be on the indebtedness of a certain person, is not such an alteration as to render the note inadmissible in evidence, but is merely a memorandum. Maness v. Henry (Ala.), 11 South. Rep. 410. A note, when executed, read as follows: "On or before the first day of November, 1889, I promise to pay. * * * If paid at maturity, interest at per cent. from November 1, 1889; but if not paid when due, interest at per cent. per annum from date until paid." Afterwards it was altered by inserting the word "eight" in the second sentence, so as to read: "If paid at maturity, interest at eight per cent. from November 1, 1889; but if not paid when due, interest at per cent. per annum from date until paid." Held, that the alteration avoided the note, since, with the days of grace, the note fell due on November 4, 1889, and if paid at maturity, as executed, it bore no interest, but, as altered, it bore interest from November 1 to November 4, 1889. Little Rock Trust Co. v. Martin (Ark.), 21 S. W. Rep. 468. The addition to a note after execution of the name of a maker, done by permission of the holder, without the knowledge of the original maker, is a material alteration destroying the effect of the note as evidence. Soaps v. Eichberg, 42 Ill. App. 375. Where one signs a printed blank form of a note, and delivers it to another, with verbal instructions to purchase certain merchandise, and to fill the blanks in the note and give it in payment, the fact that the one to whom the note is delivered signs his own name also as one of payors or makers, does not relieve the original signer from liability. Geddes v. Blackmore, 32 N. E. Rep. 567, 132 Ind. 551. A note which, after its execution, is secured by a mortgage, is not materially altered by a red-ink memorandum to that effect made on its margin without the maker's knowledge. Yost v. Watertown Steam-Engine Co. (Tex. Civ. App.), 24 S. W. Rep. 657. The insertion of a place of payment in a note after delivery is a material alteration. Winter v. Pool (Ala.), 14 South. Rep. 411. A note due at a future time, not specifying any place of payment, nor rate of interest from date, is materially altered by inserting the name of a bank, which includes its location, as place of payment, and 6 as the rate per cent. of interest from date. Gwin v. Anderson, 18 S. E. Rep. 44, 91 Ga. 827; Baugh v. Same, 18 S. E. Rep. 44, 91 Ga. 831. The purchasers of goods gave the seller

in payment therefor their note, payable to a bank. In order to have it discounted by the bank, the seller signed his name below the makers', intending thereby to indorse the note. Afterwards he induced the cashier to change the note so as to make it payable to his order, and he immediately indorsed and guaranteed it to the bank, erasing his signature on the face of the note. Held, that this alteration though made without the makers' knowledge, did not invalidate the note, since it did not change their liability. Reilly v. First Nat. Bank (Ill. Sup.), 35 N. E. Rep. 1120, 148 Ill. 349. The fact that some of the makers signed the note as sureties for the others is immaterial on an issue as to whether an alteration of the note affected its validity. Reilly v. First Nat. Bank, 35 N. E. Rep. 1120, 148 Ill. 349. The signing of a fully executed and delivered note, by a stranger, at the instance of the payee, is such an alteration as will release previous signers, not knowing thereof. Browning v. Gosnell (Iowa), 59 N. W. Rep. 340. The addition of the forged signature of a third person to a note after its execution and delivery to the payee is a material alteration, which will discharge from liability the original maker, who did not consent thereto. Farmers' Bank of Maitland v. Myers, 50 Mo. App. 157. Defendants executed their notes, payable to plaintiff's order, and placed them in the hands of one D, to be used by him in a business matter with, and to be delivered to plaintiff. Prior to such delivery, D signed the notes himself, and obtained the signature of his wife thereto. Held that, by the act of D, there was no alteration of the notes which affected their validity. Babcock v. Murray (Minn.), 59 N. W. Rep. 1038. An alteration of the printed form of a note, so as to make it payable to bearer, instead of to order, will not invalidate it, and prevent a recovery thereon, unless such alteration was made after a delivery of the note. Fowles v. Bebee, 59 Mo. App. 401, 1 Mo. App. Rep. 57. The erasure of the name of the payee of a note, and the substitution of another without consent of the maker, renders the note void, even in the hands of a *bona fide* purchaser. Erickson v. First Nat. Bank (Neb.), 62 N. W. Rep. 1087. An alteration of a note, without the knowledge of the maker, by filling up a blank space in a printed form thus increasing the amount, avoids it as to the maker. Searles v. Seipp (S. Dak.), 61 N. W. Rep. 804. Erasing from a note after delivery the words "agreeing to pay all expenses incurred by suit or otherwise in attempting the collection of this note, including reasonable attorney's fees," is a material alteration, which renders the note void, since without such words the note is negotiable. First Nat. Bank v. Laughlin (N. Dak.), 61 N. W. Rep. 473. Where the maker of a note, after it has been signed by the surety, alters it by affixing to it the rate of interest agreed upon in the original contract, and the payee thereafter strikes out such alteration, it does not constitute such an alteration of the note as will discharge the surety. McAlpin v. Clark, 11 Ohio Cir. Ct. Rep. 524. It is not an alteration of the contract of the maker of a note that the payee, on transferring it to a third person, in addition to indorsing it, writes thereon a guaranty of payment thereof. Hutches v. J. I. Case Threshing Mach. Co. (Tex. Civ. App.), 35 S. W. Rep. 60. When a note is given by a corporation, payable to the manager's wife, for money due him for salary, and for expenditures made in behalf of the company out of funds represented by him to have belonged in part to the wife, an alteration of the note so as to make it payable to the manager himself is a material one. Sneed v. Sabinal Mining & Milling Co. (C. C. A.), 71 Fed. Rep. 493, 18 C. C. A. 213. Where a note is made in California, without designating a place of payment, and is indorsed by sureties, the subsequent insertion of "at Ilion National Bank, Ilion, N. Y.," written by the maker before delivery, is a material alteration, which releases the sureties; since without the alteration the note would have been payable only in California, under Civ. Code, Secs. 1489, 3100. Pelton v. San Jacinto Lumber Co. (Cal.), 45 Pac. Rep. 12. Where a note provided that the makers, indorsers, and guarantors waived presentment of payment, notice of non-payment, protest, notice of protest, and due diligence in bringing suit, it was not a material alteration thereof to write over the blank indorsement of the payee, "Payment guarantied." Iowa Valley State Bank v. Sigstad (Iowa), 65 N. W. Rep. 407. The addition to a note of the words, after the name of the payee, "or holder," and, "A lien is retained on said land until all the purchase money is paid," is a material alteration, and no action can be brought on such note. McDaniel v. Whitsett (Tenn.), 33 S. W. Rep. 567. To add a name to a note as a joint maker thereof, without the knowledge and consent of the original maker of the note, after it has been transferred, is a material alteration thereof, and discharges the original maker from liability thereon. Ford v. First Nat. Bank (Tex. Civ. App.), 34 S. W. Rep. 684. The alteration of a note by the payee so as to have it bear interest from date, instead of from maturity, for the purpose of making it conform to the agreement of the parties, and without fraudulent intent, invalidates the note itself, and hence discharges the collateral security. Otto v. Halff (Tex. Sup.), 34 S. W. Rep. 910. Where a note is indorsed in blank, the unauthorized insertion of a waiver of exemptions over the name of the indorser releases the indorser. Jordan v. Long (Ala.), 19 South. Rep. 843. An accommodation indorser is not liable on a note where the date is altered after indorsement without his knowledge or consent. McMillan v. Hefferlin (Mont.), 45 Pac. Rep. 548. On an issue as to whether the erasure of the word "maturity" from a note, whereby interest became payable from the date of the note, was ratified by the makers, a charge that if the attention of the makers, "or any of them," was called to the alteration, and they said that it was all right, there was a ratification, was not objectionable, as authorizing an inference that such action by any one of the makers would amount to a ratification by all, where other charges stated that only the makers who consented to the change were bound thereby. Matlock v. Wheeler (Oreg.), 43 Pac. Rep. 867. Where, after making a payment on a note within the statutory period, the maker acquiesces in its alteration, the new promise implied from such payment will be regarded as a promise to pay the note as altered. Jacobs v. Gilreath (S. Car.), 22 S. E. Rep. 757. Where the payee of a note materially altered it, an offer by the maker to renew the note and pay it, after the alteration, on conditions which the payee did not accept, was not a waiver of such alteration. McDaniel v. Whitsett (Tenn.), 33 S. W. Rep. 567. In an action on a note, the burden of showing its invalidity rests on the defendant; but, if it be shown that the name of the payee has been changed without the consent of the maker, the defense is established, and the burden is then on the plaintiff to show that the alteration was ratified, or for other reasons was not available as a defense. Sneed v. Sabinal Mining & Milling Co. (C. C. A.), 73 Fed. Rep. 925.

BOOK REVIEWS.

BEACH ON THE MODERN LAW OF CONTRACTS.

In adding this to his already numerous contributions in the field of law, the author only increases the debt of gratitude due him from the bar. The title is suggestive of the want which he has so successfully satisfied—a presentation of the modern law. It has long been recognized that there have been great developments in the law of contracts, with which text books have not kept pace. Although elementary principles have not been overturned or set aside, the constantly growing complexity of our business life has required modifications and new applications of the principles to be made, to such an extent that the old discussions upon them are inadequate to the demands of the busy lawyer. By this comprehensive work in which special attention is given to the new features of the law, the author has greatly lightened the labors of his fellows in the profession.

The work is in two volumes containing 2,300 pages of text with elaborate notes. Even a superficial glance at the notes shows the great care that has been taken to select the best and latest adjudications upon every proposition. As shown in the alphabetical table, the cases cited number over 20,000, and many of these are cited several times. There has been no attempt to swell number at the expense of quality by injecting into the notes long lists of cases upon indisputable general propositions of law, but every citation is of practical use to the lawyer.

Beginning with an introductory chapter in which the essential elements of contracts are considered in their relation to each other and definitions are given, the author takes up the elements in detail, devoting a separate chapter to each. With masterly clearness and conciseness he treats of offer and acceptance, of certainty, of conditions and of the consideration. Then follow chapters bearing upon the obligation, discharge or performance of contracts, warranty, performance, tender, payment, breach, release, accord and satisfaction. Matters relating to the statute of frauds and the law of place follow, and the first volume closes with chapters upon the interpretation of contracts and the right of rescission and cancellation. In the second volume special topics under the law of contracts are considered. First, the equitable power of reforming contracts and enforcing specific performance is treated elaborately. Following this come what are probably the most valuable chapters of the work, upon the subjects which the author's previous works qualify him to treat with exceptional clearness and accuracy. The chapters on contracts of corporations cover more than four hundred pages. The contractual powers of corporations generally, of their officers and of their stockholders, and the liabilities growing out of their several acts are subjects of two chapters. Two chapters are given to the discussion of railroad companies and their contracts, and one chapter each to municipal corporations and building associations. Next in order the author takes up the causes that go to invalidate contracts, giving in successive chapters the law of contracts as affected by coverture, infancy, insanity, duress, illegality, fraud, gambling, public policy, restraint of trade, etc. And after a chapter upon the constitutional provisions relating to contracts, the work closes with an admirably condensed statement of the remedies given at law and in equity upon contracts.

Some idea of the extent of the work may be had from an examination of the index, covering more than 300 pages which has evidently been prepared with a care so painstaking as to leave nothing more to be desired. Published by Bowen-Merrill Co., Indianapolis.

LIFE AND SPEECHES OF THOMAS CORWIN.

This interesting volume has been in our hands for some time and we have found great enjoyment in the study of the life and speeches of a man whose oratorical abilities are unsurpassed and who played so important and prominent a part in the political history of this country. The student of history will find this volume worthy of thoughtful study. It is a handsomely bound book of six hundred pages published by W. H. Anderson & Co., Cincinnati.

BOOKS RECEIVED.

The American Digest (Annual, 1896). A Digest of all the Decisions of all the United States Courts, the Courts of Last Resort of all the States and Territories and the Intermediate Courts of New York, Pennsylvania, Ohio, Illinois, Kansas, Missouri, Texas, and Colorado, U. S. Court of Claims, Court of Appeals and Supreme Court of the District of Columbia, etc., as Reported in the National Reporter System and Elsewhere, From September 1, 1895, to August 31, 1896. With Notes of English and Canadian Cases, etc. A List of the Reports Included, a Table of the Cases Digested, and a Table of Cases Overruled, Criticised, Followed, Distinguished, etc., During the Year. References to the State Reports Given by an Improved Method of Topical Citation. Prepared and Edited by the Editorial Staff of the National Reporter System. St. Paul, Minn. West Publishing Co. 1896.

WEEKLY DIGEST

Of ALL the Current Opinions of ALL the State and Territorial Courts of Last Resort, and of the Supreme, Circuit and District Courts of the United States, except those that are Published in Full or Commented upon in our Notes of Recent Decisions, and except those Opinions in which no Important Legal Principles are Discussed of Interest to the Profession at Large.

1. ACCIDENT INSURANCE—Notice of Injury or Death.—In an action on a life and accident policy which required, under penalty of forfeiture, notice of accidental injury or death to be given within 10 days, with "full particulars of the accident and injury," it appeared that the insured was drowned; that his wife, the beneficiary, did and could not know until the finding of a coroner's jury, 11 days after his death, that he had died of accident; that, within 5 days afterwards, she gave the required notice; and that the company admitted that he was accidentally drowned: Held, that the notice was sufficient where the company's general agent had actual knowledge of the facts within less than 10 days.—PEELE V. PROVIDENT FUND SOC., Ind., 44 N. E. Rep. 661.

2. ADMINISTRATION—Action by Administrator—Rights of Heirs.—Generally, an action to recover a debt payable to a deceased intestate must be brought by the administrator of the estate. Such an action cannot be maintained by the heirs at law, unless there be no demands against their decedent ancestor, and there has been no administration, or the administration has been closed.—COX V. YEAZEL, Neb., 60 N. W. Rep. 483.

3. ADMINISTRATION — Administrators — Accounts.—Where an estate was insolvent unless it could collect the amount of an insurance policy on deceased's life, which the company refused to pay, and the administratrix contracted to pay attorneys reasonable fees for services in a suit against the company contingent on collection of the policy, on payment of such fees, without the amount being fixed or approved by the court, the administratrix was entitled to a credit of the amount paid.—FILBECK V. DAVIES, Colo., 46 Pac. Rep. 214.

4. ADMINISTRATION — Administrators — Accounting—Interest. — An administrator who has mingled the funds of the estate with his own, and used them for his own benefit, is chargeable with interest thereon.—WESTOVER V. CARMAN'S ESTATE, Neb., 68 N. W. Rep. 502.

5. ADMINISTRATION—Claims against Decedents—Failure to File within Statutory Time.—Under Hurd's St. 1895, ch. 3, § 70, declaring that demands against estates of decedents not exhibited within two years from the granting of letters shall be forever barred unless the creditors shall find other property of the deceased, not inventoried, the failure of one who holds a note secured by trust deed to file his claim within the required time will not affect his concurrent right to foreclose the security.—KITTREDGE V. NICHOLES, Ill., 44 N. E. Rep. 742.

6. APPEAL—Right to Second Appeal.—Where an appeal has once been taken, and appellant has failed to perfect it in proper time, or the same has for any cause been dismissed, he may take a second appeal at any time within which appeals are allowed.—STATE NAT. BANK OF DENISON V. CARDWELL, I. T., 37 S. W. Rep. 103.

7. APPEAL—Review — Affidavits.—Where the affidavits in support of and against a motion to dismiss an action for failure to prosecute the same are conflicting, dismissal of the action will not be disturbed.—CABINET-MAKERS' UNION V. CITY OF INDIANAPOLIS, Ind., 44 N. E. Rep. 757.

8. ATTACHMENT AND EXECUTION—Levy on Equitable Interest. — As attachments and executions may be levied on equitable interests in real estate in Michigan, a bill in aid of an execution or attachment so levied will be entertained in the federal courts of equity sitting in that State.—LANT V. MANLEY, U. S. C. C. of App. 75 Fed. Rep. 627.

9. ATTACHMENT — Dissolution—Rights of Debtor.—A debtor, who had transferred all his interest in property subsequently attached to one who is not a party to the attachment suit, cannot, in his own name and right, be permitted, on motion for a dissolution of the attachment, to establish the validity of his transfer.—KOUNTZE V. SCOTT, Neb., 68 N. W. Rep. 479.

10. ATTACHMENT—Sufficiency of Affidavit.—Where the facts which the statute requires to be stated in an affidavit for attachment are not so stated, the attachment should be dissolved, even though such requisite facts are alleged in the complaint.—FISK V. FRENCH, Cal., 46 Pac. Rep. 161.

11. ATTACHMENT—Validity—Waiver of Irregularities.—While the defendant in an attachment case may waive mere irregularities, he cannot, as against junior attaching creditors, waive a substantial departure from the mode prescribed by law, for giving effect to the attachment, nor can he waive defects which prejudice the substantive rights of such creditors.—DEERE, WELLS & Co. V. EAGLE MANUF'G CO., Neb., 68 N. W. Rep. 504.

12. ATTORNEYS—Disbarment.—It is no objection to a disbarment proceeding by the court under Code Civ. Proc. § 287, that the matter charged as violation of professional obligations constitutes a felony, and that he has not yet been tried by a criminal court.—IN RE WHARTON, Cal., 46 Pac. Rep. 172.

13. CONTRACTS—Promise for Benefit of Third Person.—One H, being indebted to defendants, executed an instrument reciting that he had transferred his whole stock of goods to them, that he was indebted to plaintiff in a certain sum, and that, in consideration of the premises, defendants "agree to guaranty" payment of plaintiff's claim. It appeared that defendants made the agreement in the belief that the property transferred to them was sufficient to pay plaintiff's claim as well as their own, and that the debtor refused to make the transfer except on the condition that defendants would bind themselves to pay said debt to plaintiff, who was not privy to the contract or consideration: Held, that defendants' promise was an original undertaking, creating an absolute liability on their part to plaintiff, on his acceptance of the promise, irrespective of the liability of the original debtor.—CLARK V. HOWARD, N. Y., 44 N. E. Rep. 695.

14. CARRIERS—Passenger—Tender of Legal Fare.—A passenger who tenders the legal fare, and is put off the train because he will not pay a higher fare charged, may recover damages. He is not bound to pay the fare charged, with right to sue for excess.—CHAMBERLAIN V. LAKE SHORE & M. S. RY. CO., Mich., 68 N. W. Rep. 423.

15. CARRIERS OF PASSENGERS — Connecting Lines—Ticket Broker.—Although a railroad company in Illinois may be the agent of the receiver of a railroad in Georgia to sell in Chicago tickets from that city to Jacksonville, Fla., and return, with coupons thereon for passage over the railroad operated by the receiver, each of such tickets having upon it a special contract, to be signed by the original purchaser, and stipulating that the ticket should be used by him only, there is no presumption that the Illinois company was authorized by the receiver, directly or indirectly, to place in the hands of a ticket broker or "scalper," for sale, in Atlanta, Ga., tickets of this kind, stamped at the Chicago office of the Illinois company, but with the contract thereon unsigned by any purchaser, and with the coupons for the railroads between Chicago and Atlanta detached.—COMER V. FOLEY, Ga., 25 S. E. Rep. 671.

16. CARRIERS OF PASSENGERS—Ejectment from Train—Exemplary Damages.—While it may not, as a general proposition, be true that every illegal expulsion of a passenger from a train will entitle him to exemplary damages, the charge to that effect given in the present case is not cause for a new trial, because it plainly appears from the evidence that if the plaintiff was entitled to recover at all, it was a case for the allowance

of such damages.—WESTERN & A. R. CO. v. LEDBETTER, Ga., 25 S. E. Rep. 663.

17. CHATTEL MORTGAGE — Assignment.—A sale and transfer of a negotiable note secured by mortgage operates as an assignment of the mortgage, and the transferee is not bound by the subsequent contracts of the original mortgagee with reference to the mortgaged property, in the absence of a relationship of principal and agent between them.—TILDEN v. STILSON, Neb., 68 N. W. Rep. 477.

18. CONTEMPT—Presumptions—Proceedings for contempt of court are, in this State, in their nature criminal, and governed by the strict rules applicable to prosecutions by indictment; hence presumption and intendments will not, in such cases, be indulged, in order to sustain judgment of conviction.—BECKETT v. STATE, Neb., 68 N. W. Rep. 473.

19. CONTRACT — Measure of Damages. — Where importers, at the time they accept an order from jobbers for goods to be delivered at a particular time, are notified that, soon after the time fixed for such delivery, the jobbers intend to send out their traveling men, and the importers fail to deliver the goods, the jobbers are entitled to damages resulting from the fact that their traveling men were idle until the goods could be obtained elsewhere.—BLUMENTHAL v. STAHLE, Iowa, 68 N. W. Rep. 448.

20. CONTRACT — Sale. — A contract by which the first party was to furnish to the second a music box with a drop-slot attachment, the second party to remit each week the collections therefrom, making up the amount to a certain sum if below that until he had remitted $250, when he was to own the box, with an option to the first party in case of default to sue for the balance due, or to refund one-half the collections remitted and retake the instrument is a contract of sale and purchase, on which the first party can sue in case of a default in payment for the unpaid balance of the contract price.—BEIST v. SIPE, Ind., 44 N. E. Rep. 762.

21. CONTRACT TO CONVEY LAND — Measure of Damages. — Defendants agreed, in consideration of $250 paid, to deed to plaintiff one lot in the plat of a city named, "being the choice of any $250 lot in said" city, as laid off by defendants, or forfeit $500 to plaintiff: Held, that the measure of damages for breach of the contract by defendants was the amount of money paid to them, with interest thereon from date of payment. —MARSH v. CAVANAUGH, Wash., 46 Pac. Rep. 239.

22. CREDITORS' BILL—Simple-Contract Creditors.—A creditor whose claim has not been reduced to judgment cannot maintain an action in equity to enforce his legal demand, and a bill will not be entertained in aid of an attachment on the ground that the debtor has absconded, or left the State, and cannot be served with process.—DETROIT COPPER & BRASS ROLLING MILLS v. LEDWIDGE, Ill., 44 N. E. Rep. 751.

23. CRIMINAL EVIDENCE — Privileged Communications. — Communications from one physician to another, made to secure the aid of the latter in the commission of an abortion, are not privileged.—STATE v. SMITH, Iowa, 68 N. W. Rep. 428.

24. FORMER JEOPARDY — Larceny. — An acquittal of larceny is not a bar to prosecution for breaking and entering.—STATE v. INGALLS, Iowa, 68 N. W. Rep. 445.

25. CRIMINAL LAW—Former Jeopardy—Quashing of Indictment.—The quashing of an indictment, and the discharge of a defendant thereon, on the ground that the grand jury finding the indictment was illegally constituted, is no bar to a subsequent indictment or prosecution of the defendant for the same offense.—STATE v. SCOTT, Iowa, 68 N. W. Rep. 451.

6. CRIMINAL LAW—Intoxicating Liquors—Evidence. —In a prosecution for selling liquor to minors in violation of law witnesses testified that they saw minors purchase liquors in defendant's saloon, and some of them stated that they did not know the ages of such persons, but believed from their appearance they were minors: Held, that it was not error to refuse to instruct the jury that the testimony as to the belief of such witnesses should be disregarded. — STATE v. BERNSTEIN, Iowa, 68 N. W. Rep. 442.

27. CRIMINAL LAW — Jury — Deliberation.—In a prosecution for the illegal sale of liquor, the fact that one juror, while the jury were in deliberation, stated to two others that he knew that defendant had sold liquor, as he had purchased it, is not ground for the reversal of a conviction, where the jurors who heard the statement testified that they did not consider it in arriving at the verdict.—STATE v. WRIGHT, Iowa, 68 N. W. Rep. 440.

28. CRIMINAL LAW—Offenses against Election Laws.—Elliott's Supp. § 1396 (Horner's Rev. St. 1896, § 4768), provides that whoever hires or buys any person to vote or refrain from voting any ticket or for any candidate for any office at any election, etc., and all persons aiding such acts, shall become liable to the person hired in the sum of $300: Held that, where a voter is hired to go away from the polls and refrain from voting at the time he goes there for that purpose, the offense denounced by the statute is complete, though the voter subsequently returns, and casts his vote.—THOMPSON v. STATE, Ind., 44 N. E. Rep. 763.

29. CRIMINAL LAW—Perjury—Statements of Opinion.—A prosecution for perjury cannot be predicated on the testimony of a witness in giving his estimate of the value of certain assets of a bank, where it does not appear that he made any misstatements of facts, or that he did not answer all questions in accordance with his best judgment.—IN RE HOWELL, Cal., 46 Pac. Rep. 159.

30. CRIMINAL LAW—Threatening Letters—Collection Agency.—Under Rev. St. 1889, § 3782, providing that any person delivering any letter, writing, etc., threatening to do injury to the "credit or reputation" of another, shall be guilty of a misdemeanor, a person sending letters to a debtor, threatening to publish him among his neighbors as a bad debtor unless the debt is paid, is liable.—STATE v. MCCABE, Mo., 37 S. W. Rep. 128.

31. CRIMINAL LAW—Want of Arraignment and Plea.—Mansf. Dig. Ark., in force in the Indian Territory provides that arraignment may be dispensed with, by defendant's consent; that, on arraignment, defendant must either move to set aside the indictment, or plead thereto; and that an issue of fact arises on a plea of not guilty, etc. Section 2454 provides that a judgment of conviction shall only be reversed for error (1) in rulings on evidence; (2) in instructions; (3) in failing to arrest the judgment; (4) in allowing or disallowing a peremptory challenge; and (5) in overruling a motion for a new trial: Held that, where a defendant indicted for a misdemeanor goes to trial without being arraigned or pleading, arraignment and plea are thereby waived, and a conviction thereupon will not be reversed.—GAINS v. UNITED STATES, I. T., 37 S. W. Rep. 98.

32. CONSTITUTIONAL LAW — State Legislature — Joint Resolution.—The expression of the sovereign will of the legislature that a particular proposition or question be submitted to the people to be voted upon need not take the form of a law. It is sufficient if it be in the form of a joint resolution.—STATE v. DAHL, N. Dak., 68 N. W. Rep. 418.

33. CONSTITUTIONAL LAW—Sunday Laws—Barbers.—An ordinance prohibiting barbers from pursuing their calling for compensation on Sunday violates the constitutional inhibition against special legislation.—CITY OF TACOMA v. KRECH, Wash., 46 Pac. Rep. 255.

34. CONVERSION OF MORTGAGED CHATTELS—Damages. —The measure of damage in an action by the mortgagee for the conversion of mortgaged chattels is the amount of the plaintiff's mortgage, not exceeding the value of the property converted.—KASPER v. WALLA, Neb., 68 N. W. Rep. 476.

35. DECEIT — Representations of Value. — When the seller of property, who is in a position to show its actual value, and who also knows that the purchaser is ignorant of such value, and relies on his representa

tions, makes statements in regard to its value which he knows to be false, to induce the purchase, such statements are not merely expressions of opinion, but representations by which the seller is bound if, under all the circumstances, the purchaser, in relying thereon, acted with ordinary prudence.—MURRAY v. TOLMAN, Ill., 44 N. E. Rep. 748.

36. DEDICATION—Legislative Interference with Subject-matter.—Where land has been dedicated to a specific, limited, and definite public use, the legislature has no power to destroy the trust, or divert the property to any other purpose inconsistent with the particular use to which it was dedicated. The State holds such property, not in a proprietary, but in a sovereign, capacity, in trust for the use to which it was dedicated. While much must be left to the discretion of the legislature as to the best manner of regulating that use, yet its power of control over such property must be exercised in conformity with the purpose of the dedication.—CITY OF ST. PAUL v. CHICAGO, M. & ST. P. Ry. Co., Minn., 68 N. W. Rep. 458.

37. DEDICATION — Plat — Acknowledgment. — A recorded plat, on which a tract is subdivided into lots, and an unmarked strip left on one side thereof, is not a statutory dedication of such strip, unless the plat was made by the county surveyor.—BLAIR v. CARR, Ill., 44 N. E. Rep. 720.

38. DEDICATION—User.—One who buys lots according to a plan which shows an alley leading to the rear thereof, and furnishing an entrance thereto, acquires an irrevocable right to the use of such way.—WILSON v. ACREE, Tenn., 37 S. W. Rep. 90.

39. DEED — Delivery. — A deed is inoperative, for want of delivery, where the grantor retained possession of the instrument, exercising exclusive control over it and its place of deposit, and died in possession of the premises described therein, without having done or said anything clearly showing an intention that title should pass to the grantees during his lifetime.—ATWOOD v. ATWOOD, Wash., 46 Pac. Rep. 240.

40. DEED—Evidence — To Contradict Recital.—Parol evidence is not admissible to show that the consideration for a deed made by a husband to his wife, which recited that it was made in consideration of the relinquishment by the wife of her dower rights in lands owned by the husband, also included the relinquishment of her dower right in land which the husband had previously sold and conveyed. — HALFERTY v. SCEARCE, Mo., 37 S. W. Rep. 114.

41. DEED — Vesting of Title. — The legal title to real estate is vested in the grantee by a deed thereof absolute in form and import of its terms, executed by a competent grantor, although such instrument may be in fact a mortgage, or given as security for the payment of the debt of the grantor to the grantee. There remains in the maker of the conveyance but the right to demand, on payment of the indebtedness so secured, and receive, a reconveyance of the title; and, in order that he may be again invested with the title to the property, a reconveyance is necessary. — FIRST NAT. BANK OF PLATTSMOUTH v. TIGHE, Neb., 68 N. W. Rep. 490.

42. DETINUE—Damages—Divorce.—Where, pending a suit by the husband to recover community property from a purchaser thereof of the wife, a decree of divorce is granted to the wife, in which the property is awarded to her, plaintiff can only recover the costs, and the damages for the detention.—CARNEY v. SIMPSON, Wash., 46 Pac. Rep. 233.

43. DRAINAGE—Dissolution — Sufficiency of Petition. —In a proceeding under Act June 4, 1889, providing for the dissolution of drainage districts, the fact that the petition, final report of commissioners, notice of the time of hearing, and the affidavit of posting notices are verified by a notary public, who appeared as one of the attorneys in the case, is not ground for reversal of a judgment of dissolution.—HOLLENBECK v. DETRICK, Ill., 44 N. E. Rep. 738.

44. EJECTMENT—Title.—A plaintiff in ejectment, to recover, must show a legal estate to the premises for which he sues, but the evidence of this legal estate need not be a perfect, legal paper title.—LANTRY v. WOLFF, Neb., 68 N. W. Rep. 494.

45. ELECTION OF REMEDIES — Torts.—Whenever one person commits a wrong or tort against the estate of another, with the intention of benefiting his own estate, the law will, at the election of the party injured, imply or presume a contract on the part of the wrongdoer to pay to the party injured the full value of all benefits resulting to such wrongdoer; and, when the injured party elects to waive the tort, his cause of action may be used as a set-off.—ATCHISON, T. & S. F. R. CO. v. PHELPS, Kan., 46 Pac. Rep. 183.

46. EVIDENCE — Certified Transcript of Record.—A certified transcript of the record of a deed duly recorded may be read in evidence with like force and effect as the original deed, whenever the original is shown to be lost, or not belonging to the party seeking to use it, nor within his control.—THAMS v. SHARP, Neb., 68 N. W. Rep. 474.

47. EVIDENCE — Modification of Contract by Parol.—The rule that parol evidence cannot be received to contradict or vary a written agreement does not exclude parol evidence of a modification of such a contract after its execution.—HARRIS v. MURPHY, N. Car., 25 S. E. Rep. 708.

48. EVIDENCE — Receipt — Parol Evidence.—A memorandum reciting that "this is to show that J and K have this day settled all accounts standing between them to date, and all square except the balance of $302.54 as dealing with and through S," is subject to be explained by parol evidence as to the matters considered in the settlement.—KEATON v. JONES, N. Car., 25 S. E. Rep. 710.

49. ESTOPPEL TO DENY SURETYSHIP.—Where a surety signs a bond, and leaves it in the hands of the principal, to be delivered only upon the performance of certain conditions, and the principal delivers the bond to the obligee without such condition being complied with, and the obligee takes it without notice of the conditional agreement, the surety will be bound.—DOORLEY v. FARMERS' & MECHANICS' LUMBER Co., Kan., 46 Pac. Rep. 195.

50. FEDERAL COURTS—Jurisdiction in Patent Cases.—The provision in the judiciary act of 1887-88, requiring suits to be brought in the district whereof the defendant is an inhabitant, does not apply to patent suits, whether the defendant is a corporation or an individual, and either may be sued wherever valid service can be had.—EARL v. SOUTHERN PAC. CO., U. S. C. C. (Cal.), 75 Fed. Rep. 609.

51. FRAUDULENT CONVEYANCE — Preferences.—An insolvent debtor has the right to pay or secure a creditor to the exclusion of others, and the intention to defraud cannot be inferred from the mere fact that such preference was given.—DEMPSTER MILL MANUF'G CO. v. FIRST NAT. BANK OF HOLDRIDGE, Neb., 68 N. W. Rep. 477.

52. FRAUDULENT CONVEYANCE—Reservation.—An assignment, absolute on its face, to a bank, by a contractor, of moneys due and to become due the contractor under a construction contract, though intended merely as security for moneys loaned and to be loaned by the bank to enable the contractor to carry on the work, with an agreement that the bank shall collect the monthly payments on the work, credit the contractor therewith, and charge him with the amount then due the bank, is not void as to creditors because of the further agreement that any balance, from month to month, in the contractor's favor, shall be subject to his check; there being no fraudulent intent. —DIDIER v. PATTERSON, Va., 25 S. E. Rep. 661.

53. FRAUDULENT CONVEYANCE—Validity between Parties.—Transfers and conveyances void as against creditors, because made with intent to hinder, delay,

or defraud them, are, nevertheless, valid as between the parties.—GROSS v. GROSS, Wis., 68 N. W. Rep. 469.

54. FRAUDULENT CONVEYANCES—Action to Set Aside. —A negotiable promissory note imports, or is *prima facie* evidence of, a consideration, and when such a note and the accompanying chattel mortgage, securing its payment, are properly identified, they may be received in evidence; and this is true in an action in which their validity is attacked on the ground of fraud, as against the rights of the creditor of the maker.—PLUMMER v. GREEN, Neb., 68 N. W. Rep. 500.

55. FRAUDULENT CONVEYANCES—Action to Set Aside. —An instruction that the purchase of a stock of goods at an assignee's sale by a brother of the assignor, and the placing them in the hands of another brother, who was insolvent, were badges of fraud, was not erroneous, where the evidence showed a number of previous transactions between the assignor and his relatives of a suspicious character.—GOLDBERG v. COHEN, N. Car., 25 S. E. Rep. 707.

56. FRAUDULENT CONVEYANCES — Right of Officer to Attack.—In an action against an officer for conversion of chattels claimed under a mortgage, though defendant took the property under an attachment against the mortgagor, he may defend his possession, and attack the mortgage as in fraud of creditors, without alleging or proving indebtedness of the mortgagor to plaintiff in attachment; he having alleged and proved that judgment was rendered for such plaintiff in the attachment suit, and the property ordered sold, pursuant to which execution issued, and was levied by himself on the property.—FISHER v. KELLY, Oreg., 46 Pac. Rep. 146.

57. GARNISHMENT—Exemptions—"Wages."—The compensation of a person who is employed by an iron company to puddle iron at a fixed rate per ton, who receives his pay monthly on a particular day, and who is required to begin and quit work at certain hours, is "wages," within Mill. & V. Code, § 2931, exempting from execution or attachment $30 of the wages of every mechanic or laboring man.—ADCOCK v. SMITH, Tenn., 37 S. W. Rep. 91.

58. GARNISHMENT — Money Paid for Dismissal.—The fact that a plaintiff stipulates to dismiss an action on payment by the defendant of a certain sum to other persons does not, in the absence of fraud, render such money subject to garnishment by his creditors.—PHILLIPS v. VAN HORN, Iowa, 68 N. W. Rep. 452.

59. GIFTS—Parol Gifts of Land.—A parol gift of real estate *in præsenti* will be enforced in equity against the donor or his representatives, if the donee enters into possession, and makes valuable and permanent improvements.—BURRIS v. LANDERS, Cal., 46 Pac. Rep. 162.

60. GUARDIAN — Liability for Default of Agent.—A guardian who in good faith, and using reasonable care to select a proper agent, does select one of good repute to make collection of a claim of his ward, and such agent collected the money due thereon, and kept it, is not liable to his ward for the loss.—BEACH v. MOSER, Kan., 46 Pac. Rep. 202.

61. GUARDIAN — Sale of Ward's Land.—Where a guardian, appointed by a court of superior jurisdiction having authority to appoint guardians and order the sale of real estate of minors, but without jurisdiction to make the particular appointment, sells lands of the ward, under an order of such court, to one who purchases in good faith, the purchaser will be protected in his title, if the guardian applies the proceeds properly.—DECKER v. FESSLER, Ind., 44 N. E. Rep. 657.

62. HUSBAND AND WIFE — Separate Maintenance.—A wife who has left her husband through his fault and by his orders is not barred of an action for separate maintenance by an invitation from him to return, unless it is made in good faith, with a view to an honest reconciliation, and an intention on his part to atone for his past misconduct toward her.—PORTER v. PORTER, Ill., 44 N. E. Rep. 741.

63. HUSBAND AND WIFE — Statutory Allowance.—A wife is not bound by an oral agreement to relinquish her statutory allowance in the event she survives her husband, in consideration of the payment by him, in his life-time, of money to and for the use of another.—YELTON v. KERNS, Ind., 44 N. E. Rep. 687.

64. HUSBAND AND WIFE — Witness.—In an action against both husband and wife, to charge them jointly, under the statute, with the price of an article, as a family expense, neither defendant is competent as a witness for the plaintiff, against the objection of the other. A ring purchased by a husband or wife for his or her own use is not a family expense, within the provision of Rev. St. ch. 68, § 15, making such expenses chargeable against the property of both.—HYMAN v. HARDING, Ill., 44 N. E. Rep. 754.

65. INJUNCTION — Appeal from Order.—A temporary injunction is operative during the pendency of an appeal from the order granting it.—STATE v. STALLCUP, Wash., 46 Pac. Rep. 251.

66. INSURANCE — Conditions of Policy.—Where, in negotiations for settlement of a loss on different kinds of property, covered by the same policy, a part of which had been mortgaged by the insured in violation of a condition of the policy, the company, though informed of such mortgage, made no objection on that ground, but after an appraisal, including the mortgaged property, tendered payment of the amount thereof, and prepared proofs of loss for the insured to sign, covering such property, and also rejected proofs of loss presented by the insured, solely on other grounds, its conduct amounted to a waiver of such condition.—KIERNAN v. DUTCHESS COUNTY MUT. INS. CO., N. Y., 44 N. E. Rep. 698.

67. INSURANCE—Contract—Conditions.—Plaintiff was engaged in the cold storage business, keeping in store eggs, poultry, etc., which were constantly changing. The policy in suit insured the merchandise contained in the warehouse, "not specifically insured." Plaintiff held another policy on the poultry in the warehouse: Held, that the poultry was "specifically insured," and therefore was not covered by the second policy.—FIREMANS' FUND INS. CO. v. WESTERN REFRIGERATING CO., Ill., 44 N. E. Rep. 746.

68. INSURANCE—Loss by Negligence of Third Person. —Where insured property is destroyed by fire negligently set out by a railroad company, the owner is not entitled to compensation for his loss from both the insurance company and the railroad company.—CHICKASAW COUNTY FARMERS' MUT. FIRE INS. CO. v. WELLER, Iowa, 68 N. W. Rep. 443.

69. JUDGMENT—Courts—Jurisdiction.—A court has no jurisdiction to enjoin the enforcement of a judgment rendered by a court of co-ordinate jurisdiction, even though the judgment is void.—SCOTT v. RUNNER, Ind., 44 N. E. Rep. 755.

70. JUDGMENT ON A JUDGMENT.—Mere recovery of judgment in an action on a judgment recovered in another jurisdiction does not satisfy, merge, or extinguish the first judgment.—ARMOUR BROS. BANKING CO. v. ADDINGTON, I. T., 37 S. W. Rep. 100.

71. JUDGMENT—Res Judicata.—A decree in a suit to enforce a claim to an interest in a note secured by deed of trust, against such claim, is binding on the grantor in ejectment against him by the trustee, who purchased the land at the sale under the deed of trust, as to the claim of such interest in the debt secured by the deed.—BIERMAN v. CRECELIUS, Mo., 37 S. W. Rep. 121.

72. JUDICIAL SALE — Appraisement — Notice.—A purchaser at a judicial sale is charged with notice of the proceedings leading to the sale, including the appraisement.—NYE & SCHNEIDER CO. v. FAHRENHOLZ, Neb., 68 N. W. Rep. 498.

73. JUSTICES OF THE PEACE — Jurisdiction.—The obvious purpose of the constitutional and statutory limitations upon the powers of justices of the peace concerning actions on contracts for real estate is to ex-

clude from the cognizance of such officers proceedings involving a determination of the title or boundaries of land, and not to render inadmissible, in actions within their jurisdiction, deeds, contracts, and other evidences of title.—LORIUS v. ABBOTT, Neb., 68 N. W. Rep. 486.

74. LANDLORD AND TENANT — Lease.—Where leased premises are vacated by the tenant before the expiration of his term, the fact that they are re-leased by the landlord will not relieve the tenant from liability for the damages sustained by the breach of the contract, unless it is shown that the landlord assented to the surrender.—SCHEELKY v. KOCH, N. Car., 25 S. E. Rep. 713.

75. LANDLORD AND TENANT—Lease—Construction.—A covenant in a lease for a term of years will not be construed as providing for perpetual renewals of the lease, in the absence of clear, unequivocal language to that effect.—BRUSH v. BEECHER, Mich., 68 N. W. Rep. 420.

76. LANDLORD AND TENANT — Lease — Trespass.—A lease of certain premises, the lessors reserving the right to pasture the same, and the right of way over every part thereof; the lessee covenanting not to disturb such reserved rights; and the lessors covenanting that the lessee, paying the rent and performing such covenants, shall peaceably hold and enjoy the premises for the sole purpose of hunting game thereon; the lessee covenanting that the number of persons who may be authorized by him to hunt on the premises shall not exceed 40—gives exclusive rights in the premises as a hunting preserve.—KELLOGG v. KING, Cal., 46 Pac. Rep. 166.

77. LIFE INSURANCE — Warranty in Application.—When the application is, by the express terms of the policy, made "a part of this contract," a breach of a warranty in the application invalidates the contract, unless some peculiarity in the warranty takes it out of the general rule.—KELLEY v. MUTUAL LIFE INS. CO. OF NEW YORK, U. S. C. C. (Iowa), 75 Fed. Rep. 637.

78. LIMITATION OF ACTIONS — Suits against Government.—The presentation of a claim against the United States to the treasury department for examination and allowance, as required by law, bars the running of the statute of limitations during the time consumed in such investigation.—UTZ v. UNITED STATES, U. S. C. C. (N. J.), 75 Fed. Rep. 648.

79. LIMITATIONS — Running in Favor of Trustee.—When one person holds the legal title to real estate as trustee for one who is the equitable owner, the statute of limitations will not run, as between them, until there is a renunciation of the trust, or until the party holding the legal title by some act or declaration asserts a claim adverse to the real owner.—KANSAS CITY INV. CO. v. FULTON, Kan., 46 Pac. Rep. 188.

80. MANDAMUS TO COUNTY CLERK.—A *mandamus* will issue, even after the expiration of the term of office of a county clerk, to compel him to perform the duty of reporting all the fees of his office, and also to pay into the treasury of the county any excess above the amount he was entitled by law to retain.—BROWN COUNTY v. BOYD, Neb., 68 N. W. Rep. 510.

81. MARRIED WOMAN — Disaffiamance of Voidable Contract.—A married woman, who, while a minor, joined with her husband in the execution of a mortgage on their homestead, may disaffirm the act, without refunding the proceeds of the mortgage, where they were received by the husband, and she received no benefit therefrom, except indirectly, as his wife.—BRADSHAW v. VAN VALKENBURG, Tenn., 37 S. W. Rep. 88.

82. MASTER AND SERVANT — Contributory Negligence —Unsafe Premises.—A servant is not bound to inspect the premises for latent defects, and where he has no actual knowledge he is chargeable with a knowledge of such defects only as would be reasonably apparent without inspection to one who was giving due attention to the duties of his employment.—SUMMIT COAL CO. v. SHAW, Ind., 44 N. E. Rep. 676.

83. MASTER AND SERVANT — Injury — Unsafe Place to Work.—It is the duty of a master to exercise care that the place where he directs a servant to work is reasonably safe, and the servant has a right to rely on the performance of such duty, and is not required to search for dangers that are not apparent.—HERDLER v. BUCK'S STOVE & RANGE CO., Mo., 37 S. W. Rep. 115.

84. MINING LEASE—Failure to Find Ore.—A lease of land "for the purpose of exploring for, mining, taking out, and removing therefrom the merchantable iron ore which is or which hereafter may be found on, in, or under said land," at a specified annual rent, presupposes the existence of ore, and if, after reasonable efforts on the part of the lessee, no ore is found, the lease fails, and no rent can be collected.—BLAKE v. LOBB'S ESTATE, Mich., 68 N. W. Rep. 427.

85. MORTGAGE — Parol Evidence.—Parol evidence is admissible to show that a mortgage was executed without consideration, as a mere form, to satisfy the relatives of the mortgagee, and to protect the interests of the mortgagor, and that it was not intended to be enforced.—CHURCH v. CASE, Mich., 68 N. W. Rep. 424.

86. MORTGAGES — Alteration.—Alteration of a mortgage by an agent, authorized to loan money for his principal on mortgages, so as to increase the mortgage debt, made without any fraudulent intent, and without the knowledge of the principal, does not invalidate the mortgage as against a subsequent mortgagee.—MATHIAS v. LEATHERS, Iowa, 68 N. W. Rep. 449.

87. MUNICIPAL CORPORATION — Amendment of Charter.—Under Const. art. 11, § 8, providing that proposed amendments of city charters may be submitted to a vote of the electors at "a general or special election," such amendments may be legally submitted at an election held for the sole purpose of voting thereon.—MILLER v. DAVIE, Cal., 46 Pac. Rep. 150.

88. MUNICIPAL CORPORATIONS—Warrants—Estoppel. —Where a bank accepts city warrants, for which it gives the city credit, it cannot, after the expiration of two years, defeat an action by the city to recover the amount of the deposit by pleading illegality of the warrants, without having made an offer to return the same, or to account therefor.—CITY OF TACOMA v. GERMAN-AMERICAN SAFE-DEPOSIT & SAVINGS BANK, Wash., 46 Pac. Rep. 256.

89. NEGLIGENCE—Natural Gas Companies—Gas Escaping from Pipes.—A complaint alleging that defendant natural gas company negligently and knowingly suffered its pipe lines to become rotten and incapable of retaining the gas, and continued to use them for conveying gas, knowing of such defective condition, and that, by reason of such carelessness and negligence, one of the pipes sprung a leak in front of the building in which plaintiff's intestate was employed, permitting the gas to escape into the earth, which it permeated, accumulating in said building, and exploding when it came in contact with fire, whereby the building was blown down, causing intestate to be buried under the debris, and to be burned by the fire immediately following the explosion, and to be injured, from the effects of which he died, charges the proximate cause of the death to be negligence of defendant.—ALEXANDRIA MINING & EXPLORING CO. v. INISH, Ind., 44 N. E. Rep. 680.

90. NEGLIGENCE — Injury to Switchman.—That the foreman of a switch crew, after being warned that a car was about to be chained on a certain track, deliberately ordered a train to be backed against the cars standing on that track, which moved them, injuring the person doing the chaining, is in itself evidence sufficient to go to the jury on the question of negligence.—PIER v. CHICAGO, M. & ST. P. RY. CO., Wis., 68 N. W. Rep. 464.

91. NEGLIGENCE—Owners of Passenger Elevator.—The duty of those operating a passenger elevator is the same as that of a common carrier, to exercise the highest degree of care for the safety of passengers, or those about to become such; and it is negligence to allow

the doorway to an elevator shaft, opening into a hallway in an office building in a city, to remain open and unguarded. — SOUTHERN BUILDING & LOAN ASSN. v. LAWSON, Tenn., 37 S. W. Rep. 86.

92. NEGLIGENCE — Railroads — Contributory Negligence.—An instruction that if deceased went upon a railroad track, after he saw a train approaching and could have avoided injury, for the purpose of saving his horse and buggy from being struck by the train, and in so doing was himself struck and killed there could be no recovery for his death, is a correct statement of the law.—MCMANAMEE v. MISSOURI PAC. RY. CO., Mo., 38 S. W. Rep. 119.

93. NEGOTIABLE INSTRUMENTS—Bona Fide Purchaser—Notice.—The corporate notes of defendant railroad company, executed in proper form by F, its president, and attested by its secretary, for the authorized purpose of purchasing supplies for defendant, were, by direction of F, made payable to his private clerk, indorsed by the payee to a firm of which F was a member, and then, before maturity, taken by F to another State, and negotiated for the benefit of the firm; the purchaser paying value therefor, and having no actual knowledge of the wrongful diversion of the paper, though aware that F was the president of defendant: Held, that the purchaser had a right to assume that the notes were issued to the nominal payee, for value, in the regular course of business, and transferred to the firm in like manner, and he was not, therefore, chargeable with notice of F's fraudulent appropriation of the paper.—CHEEVER v. PITTSBUGH, S. & L. E. R. CO., N. Y., 44 N. E. Rep. 701.

94. NEGOTIABLE INSTRUMENT—Extension to Principal.—Where the payee of a joint and several note, with knowledge of the fact that one of the makers is a surety only, after maturity of the note accepts from the principal payment of interest to a time in the future, however short, such acceptance amounts to an extension of the note, which releases the surety, unless made with his consent.—BANK OF BRITISH COLUMBIA v. JEFFS, Wash., 46 Pac. Rep. 247.

95. NEGOTIABLE INSTRUMENT—Notes—Guaranty.—On negotiating a note before maturity by the payee, a guaranty of payment waiving demand, etc., indorsed on the note, is an indorsement with an enlarged liability.—DONNERNBERG v. OPPENHEIMER, Wash., 46 Pac. Rep. 254.

96. NOVATION—What Constitutes.—Where the purchaser of a stock of goods agrees to pay all outstanding indebtedness of the seller, and a creditor of the seller agrees "to present its account for goods" to the purchaser, there is no substitution, and the seller remains liable to such creditor.—RICHARDSON DRUG CO. v. DUNAGAN, Colo., 46 Pac. Rep. 227.

97. PLEADING—Demurrer.—"It is a well-established rule of pleading, under the Code, as well as at common law, that a judgment upon demurrer must be against the party whose pleading was first defective in substance, and that a demurrer searches the entire record, and must go against the first error."—WEST POINT WATER POWER & LAND IMP. CO. v. STATE, Neb., 67 N. W. Rep. 507.

98. PLEDGEE—Nature of Liability.—The pledgee of chattels to secure the payment of a debt is a bailee, and not the owner, of the property; and he is responsible as bailee after as well as before the maturity of the debt.—BUTLER v. GREENE, Neb., 68 N. W. Rep. 496.

99. PRINCIPAL AND SURETY—Contract of Suretyship.—A surety is a favorite of the law, and has a right to stand upon the precise terms of his obligation; and when the terms used therein are not explicit the courts will place such a construction thereon as will uphold the evident understanding of the parties as to its force and effect at the time it was entered into.—MERRIMACK RIVER SAV. BANK v. CURRY, Kan., 47 Pac. Rep. 204.

100. PRINCIPAL AND AGENT—Disaffirmance.—A principal must disaffirm the unauthorized act of his agent within a reasonable time after such act comes to his knowledge, or he will be bound thereby.—FARMERS' & MERCHANTS' BANK OF ELK CREEK v. FARMERS' & MERCHANTS' NAT. BANK OF AUBURN, Neb., 68 N. W. Rep. 488.

101. PROXIMATE CAUSE.—The negligence of a railway company in blocking a street crossing with its train for an unreasonable length of time is not the proximate cause of injuries received by a pedestrian from a fall caused by a defect in the street while making a detour to pass around the train.—ENOCHS v. PITTSBURGH, C. C. & ST. L. RY. CO., Ind., 44 N. E. Rep. 658.

102. RAILROAD COMPANIES—Accident at Crossing.—It is now settled that it is not necessary to leave it to the jury whether a prudent man would look and listen before attempting to cross a railroad track, and it is the duty of the court to declare that a failure to look and listen is negligence.—PYLE v. CLARK, U. S. C. C. (Utah), 75 Fed. Rep. 644.

103. RAILROAD COMPANY—Duty to Fence.—Railroad companies are not absolved from complying with the express terms of the statute requiring them to inclose their roads with a good fence, except where some paramount interest of the public intervenes, or some paramount obligation or duty to the public rests upon them, rendering it improper for them to fence.—CHICAGO, R. I. & P. RY. CO. v. GREEN, Kan., 46 Pac. Rep. 200.

104. RAILROAD COMPANY—Eminent Domain—Obstruction of Street.—When a railroad switch is constructed upon a street for the purpose of running cars to a sawmill operated by defendant, defendant is liable for the damages to property owners from the construction of the switch, though it has nothing to do with the running of the trains over it.—PATTON v. OLYMPIA DOOR & LUMBER CO., Wash., 46 Pac. Rep. 287.

105. RAILROAD COMPANY—Liability for Killing Stock.—The failure of a railroad company to fence its track at a place where it could be fenced does not make it liable for killing stock within the limits of territory where stock is prohibited from running at large, unless the negligence of the company was the cause of the accident.—EVANS v. SHERMAN, S. & S. RY. CO., Tex., 37 S. W. Rep. 93.

106. RAILROAD COMPANY — Principal and Agents.—A purchaser of a ticket from a ticket agent at a union depot, selling tickets furnished by defendant railroad company and accepted by it, is, in the absence of a showing that he neglected other reasonable means of information, entitled to rely on the agent's statements as to the time of arrival of the train at his point of destination.—TURNER v. GREAT NORTHERN RY. CO., Wash., 46 Pac. Rep. 243.

107. RAILROAD COMPANY—Street Railroads.—A street railway has not exclusive rights to the use of its tracks and ground covered by it, and is constructed and operated on the theory that it is not an additional burden on the highway, but is merely an additional use contemplated when the street was laid out. This necessitates a liberal construction in favor of the rights of the public, and the law is averse to concede any exclusive rights to the portion of the street to railway companies, except where the necessities of the case demand.—EDGERTON v. O'NEILL, Kan., 46 Pac. Rep. 206.

108. RAILROADS—Fire Set by Locomotive.—There is no liability on the part of a railroad company to pay to an insurance company the value of property which was destroyed by a fire set out by said railroad company, and which the insurance company was required to pay to the owner by virtue of a certain contract of insurance, when the fire is shown to have been accidental.—HOME INS. CO. v. ATCHISON, T. & S. F. R. CO., Kan., 46 Pac. Rep. 179.

109. REPLEVIN — Defense — Damages.—In replevin against an officer who has levied on the property in question under an execution against a third person, defendant may set up as a defense that since the com-

mencement of the action a landlord's lien has been established against it and the property taken from him to satisfy such lien; and this though plaintiff was not a party to the landlord's attachment.—NEEB v. MCMILLAN, Iowa, 68 N. W. Rep. 439.

110. SALE—Conditional Sale — Remedy of Vendor.—The seller of personalty, who reserved the title, could, after obtaining a judgment against the buyer for the price, and collecting a portion of the same nevertheless, without canceling the judgment or paying or tendering back what had been received, maintain against the buyer an action of bail trover for the purpose of collecting the balance of the purchase money, with interest thereon.—JONES v. SNIDER, Ga., 25 S. E. Rep. 668.

111. STATUTE OF FRAUDS — Who may Plead. — A person who, by a parol contract, is to receive a conveyance from another, cannot plead the invalidity of the contract under the statute of frauds, when the other offers to perform.—TAYLOR v. RUSSELL, N. Car., 25 S. E. Rep. 710.

112. TAXATION — Sale for Taxes — Redemption by Married Woman.—The right given a married woman by Gen. St. ch. 92, art. 9, § 21, to redeem, within five years of notice of purchase, her land sold for taxes, and the question of title to the land, is not affected by a judgment merely for possession of land obtained by the purchaser at tax sale in an action against the married woman.—ANDERSON v. BATSON, Ky., 37 S. W. Rep. 84.

113. TAXATION—Succession Tax—Bonds and Stocks.—Bonds of a local corporation, kept at the residence of a non-resident owner, are not within Laws 1892, ch. 399, imposing a tax on the transfer by will of "property within the State," though testator be a non-resident.—IN RE BRONSON, N. Y., 44 N. E. Rep. 707.

114. QUO WARRANTO — Municipal Corporation. — An information in the nature of *quo warranto*, and not a bill for injunction, is the appropriate remedy to test the legal existence of a municipal corporation.—OSBORNE v. VILLAGE OF OAKLAND, Neb., 68 N. W. Rep. 506.

115. VENDOR AND PURCHASER — Execution. — Where the vendor of land who retained the title obtained against the vendee a judgment for a balance of the purchase money, and had the land levied on and sold under an execution issued upon such judgment, without first filing and having recorded a deed conveying the land to the vendee, the sale was void; and one who bid off the land could not be compelled to pay the amount of his bid, and accept the sheriff's deed to the property.—MCCORD v. MCGINTY, Ga., 25 S. E. Rep. 667.

116. VENDOR AND PURCHASER—Who is Purchaser.—Defendant agreed to furnish to a broker a certain amount of money, to be used in the purchase of a mine, which was to be conveyed to a corporation to be formed, in which defendant was to have a certain share of the stock; the money advanced to be repaid him from the profits. The broker purchased the mine in accordance with the agreement, making a cash payment thereon, which was furnished by defendant, and executing his own note for a deferred payment, defendant not being known in the transaction with the seller: Held, that the broker, and not defendant, was the purchaser, and that defendant could not be held liable on the note, as an undisclosed principal.—KROHN v. LAMBETH, Cal., 46 Pac. Rep. 164.

117. WATERS — Riparian Owners. — A railroad company, under authority from the State, constructed its bridge across the inlet of a navigable river, over land owned by the State, in such a way that the riparian owners above the inlet had reasonable means of access to the channel of the river, for boats which the inlet in its natural state would float: Held, that the bridge was not an illegal obstruction, as regards a riparian owner desiring to secure access to the river channel by an artificial channel for use by large boats, so as to entitle such owner to damages for such obstruction.—HEDGES v. WEST SHORE R. CO., N. Y. 44 N. E. Rep. 691.

118. WATER — Surface Water—Damages.—In an action of damages alleged to have been caused by the drainage of surface water from a pond on defendant's land into a draw, by which said water was conducted to and across the land of plaintiff, an admission by plaintiff that the draw was a natural water way, and had, since his ownership of the land claimed to have been damaged, been such a water way, and that the water generally from that portion of the country had flowed through this ravine, precluded the possibility of a recovery of damages for the destruction of the grass in the bed of such draw on his premises, caused by the additional flowage resulting from the aforesaid drainage.—RATH v. ZIMBLEMAN, Neb., 68 N. W. Rep. 488.

119. WILL — Devise in Lieu of Dower — Election.—Where a life estate in land is devised to the widow in lieu of her one-third interest in fee, the fact that she, having knowledge of the provision of the will, took possession of the lands, leased the same from year to year for 10 years, receiving the entire rent, one of the leases being written, and that she stated that she had a life estate in the land, shows an election on her part to take under the will, which will prevent a subsequent election to take under the law.—WILSON v. WILSON, Ind., 44 N. E. Rep. 665.

120. WILLS — Contest. — In a suit to set aside a will on the ground of mental incapacity, proof that testator was a monomaniac does not require defendant to show by a preponderance of the evidence that the monomania did not affect the execution of the will, and that testator in fact possessed testamentary capacity. He is only required to adduce sufficient evidence to prevent the preponderance from being in favor of plaintiff.—YOUNG v. MILLER, Ind., 44 N. E. Rep. 757.

121. WILLS—Failure to Name or Provide for Child.—Specific bequests, by name, to the minor children of testator's adopted daughter, with whom they live, is a sufficient naming of or providing for the daughter to prevent the operation of Rev. St. 1889, § 8877, declaring that a testator shall be deemed to have died intestate as to children not named or provided for in the will. The object of Rev. St. 1889, § 8877, providing that a testator shall be deemed to have died intestate as to children not named or provided for in the will, was to produce intestacy only when a child is unknown or forgotten, and thus unintentionally omitted.—WOODS v. DRAKE, Mo., 37 S. W. Rep. 109.

122. WILLS—Nature of Estate.—Testator gave all his estate to his wife "absolutely, and to the use of her own interest and benefit during her natural life," and enumerated his personal property and real estate. He further gave his wife "whatsoever of both personal and real estate of which I may die seised or have sufficient and legal title, and not hereinbefore enumerated," and declared that it was his will that if, at the death of his wife, there should be any personal or real estate, to be divided among his blood relations, four nieces named should each receive $5, and a nephew named $50; that the residue, if any, should be equally divided between the legal heirs of a brother and the nephew named; and that he empowered his wife to dispose of all the real and personal estate as she might think best: Held, that the wife took a life estate only with power of disposal.—EVANS v. FOLKS, Mo., 37 S. W. Rep. 126.

123. WILLS — Trustees. — Testator gave to his "said executors" all his property, "in trust, nevertheless," for certain uses, and then directed a sale of the property and division among certain beneficiaries. One of the executors appointed was a non-resident, who, by statute, was incompetent to act as an executor, and part of the property was held by testator as trustee: Held, that the executors held the property as trustees, and not as executors.—SMITH v. SMITH, Wash., 46 Pac. Rep. 249.